

Guiding Principles for Market Studies

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(Note – this document will be published in the form of an A5 digital booklet. The agreed text of the work product is submitted here for approval)

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Introduction

What is the purpose of this booklet?

This booklet sets out guiding principles for conducting market studies. These principles derive from and complement the good practices identified in the ICN's Market Studies Good Practice Handbook (April 2016).¹

The booklet aims to offer both case officers and staff responsible for strategic planning and conducting market studies an understanding of the overarching issues to consider when undertaking market studies. The Market Studies Good Practice Handbook can be consulted for more detailed information on the specific issues identified in this booklet.

The guiding principles have been drafted to have relevance for the broadest range of ICN member authorities possible. Just like the good practices, they are not prescriptive, and ICN members should select from them according to their own needs, priorities and resources, subject to their differing legal powers and duties.

What is a market study?

Consistent with the definition of market studies adopted in ICN's Market Studies Good Practice Handbook, market studies are defined as research projects conducted to gain an in-depth understanding of how sectors, markets, or market practices are working. Market studies are in this context distinguished from enforcement action against individual undertakings.

They are conducted primarily to better understand changes in a market or sector, emerging areas of interest, or 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.

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 build authorities' capacity and, if successful, not only enhance their reputation and credibility but also promote better market outcomes.

¹ Available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc1088.pdf>.

Developing your market study process

Guiding Principles

Market studies can demand significant amounts of time and resources. Competition authorities should therefore consider available resources before launching a market study.

Authorities should consider developing a process for carrying out and implementing market studies. This can help ensure that they are conducted in an efficient and transparent manner, and that the resources invested are allocated efficiently and effectively.

Sometimes it is necessary to collect information from stakeholders. Having a consistent process for collection of information and planning stakeholder engagement before, during and after a market study increases transparency and may help minimise burdens on such stakeholders as well as the authority. It can also encourage stakeholders to comply with information requests from the authority.

From the ICN Market Studies Good Practice Handbook

“A market study process can include some or all of the following steps:

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.

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.

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.

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.

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.

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.

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.”

Step 1: Identifying and selecting a market to study

Guiding Principles

It is important to select and prioritize the most appropriate subjects for market studies.

Authorities should therefore consider developing sound and flexible selection and prioritization principles to use when deciding the subject for a market study. Such principles help maximize the likelihood of identifying and securing market studies likely to yield useful outcomes.

However, when selecting subjects for market studies, authorities should also take into account practical considerations, such as available human resources and the costs and benefits of the intervention. Sometimes the benefits may not be quantifiable as the goal could be to gain understanding of the market. Authorities may also consider how a particular study can contribute to an ongoing policy discussion or debate.

From the ICN Market Studies Good Practice Handbook

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

Good practices to consider when identifying and selecting a market to study:

- ✓ consider market study subjects from a wide range of sources and collect information on potential subjects both from within the authority and from external sources such as other authorities, industry and trade associations and consumer groups.
- ✓ various factors can be considered when developing prioritisation and selection criteria, such as the size and/or type of any potential detriment to consumer welfare, or past advocacy, monitoring, or enforcement activity that indicates a history of anticompetitive conduct or competition concerns.
- ✓ consider making the selection and prioritization principles public, to enhance transparency and reduce the likelihood that the authority is seen to be biased.
- ✓ carefully weigh different potential subjects and select only those that best meet the authority's objectives.

If your authority is required to conduct a market study, it is considered good practice to:

- ✓ engage in dialogue and coordinate with the mandating body prior to any requirement being imposed.
- ✓ seek clarification on expectations for the market study, including timelines and deliverables, from the mandating body at the outset.
- ✓ ensure that the market study process effectively accounts for any relevant different constraints, opportunities and requirements from those that apply when market studies are self-initiated.

If two or more authorities are considering conducting a joint study, it is considered good practice to:

- ✓ consider carefully the costs and benefits of working jointly.
- ✓ ensure clarity at the outset of the market study as to the respective roles and responsibilities of each participating authority.

Step 2: Scoping and planning a market study

Guiding Principles

Once the subject for a market study has been selected, authorities should define the scope and duration of the market study.

It is important to ensure that the scope and timeframe are focused and manageable enough to minimize distractions by out-of-scope items for the study to be delivered on time and with quality. At the same time, it is important to retain enough flexibility to be able to incorporate unanticipated findings learned during the course of the market study.

Authorities should consider establishing a core team to work on the project that combines members with relevant professional skills, experience and market knowledge. Under certain circumstances, authorities may consider the use of external consultants to carry out some or all of the external research for a market study.

Authorities should consider preparing a detailed plan, including anticipated actions, tasks, responsibilities, key deliverables and milestones. Authorities should also consider setting firm timelines for certain phases, including stakeholder engagement, to ensure that the study timing remains intact.

Authorities can also develop strategies for the participation of external parties and consider and identify elements that need particular attention during the market study.

From the ICN Market Studies Good Practice Handbook

“Ensure that the market study process effectively accounts for any relevant constraints, opportunities or requirements when conducting a market study that is required by the government or legislature. For instance, if the market study is particularly high-profile it may be advisable to deploy additional resources and to take into account potential effects on the ability of the authority to deliver its other priorities.”

Good practices to consider when scoping and planning a market study:

- ✓ Contact authority staff members who will need to be engaged, consulted and/or involved in approving the work early in the process. Give them notice of how and when their input will be required.
- ✓ Establish clear roles within the team at the outset of the study.
- ✓ Consider and address conflicts of interests that could arise.
- ✓ Have regular team meetings and report internally on process.
- ✓ Carefully consider the role and responsibilities of any external providers before they are contracted.
- ✓ Identify and contact other public bodies that might be working on or considering working on issues that could be relevant for the market study.
- ✓ Before or shortly after the launch of the market study, consult stakeholders on the scope and possible outcomes of the study.
- ✓ Consider and manage the risks and uncertainties associated with a market study.
- ✓ Use a quality assurance process to ensure the work meets appropriate standards.

Step 3: Planning stakeholder engagement

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Stakeholders can provide crucial input to a market study at various stages of the process. To ensure successful stakeholder engagement and market study outcomes, authorities should publicly solicit broad voluntary stakeholder engagement.

Authorities should therefore consider developing a stakeholder engagement strategy early in the process, including a description of how and when the authority will seek to engage stakeholders in the market study process and a plan for how the authority will solicit and use this input.

Authorities should identify the key stakeholders and take into account their interests and relevant knowledge and experience. This is especially important if the stakeholders are participants in the market that may become the subject of recommendations as an outcome of the market study.

However, it is important for authorities to bear in mind that stakeholders have their own motivations and perspectives. To preserve the objectivity of a study, it is useful for authorities to guard against becoming too closely identified with any one or more stakeholders and their views.

From the ICN Market Studies Good Practice Handbook

“Stakeholders may include:

- Government departments, regulators and public bodies at national, regional or local levels
- International organisations;
- Businesses and trade bodies, 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
- Other parties that may have an interest in the market.”

Good practices to consider when planning stakeholder engagement:

- ✓ publicly solicit broad voluntary stakeholder engagement before and during market studies and after completion of a market study.
- ✓ review and update the stakeholder engagement strategy as necessary throughout the study.
- ✓ consider multiple levels of engagement to address different stakeholder groups / different issues.

Step 4: Launching a market study

Guiding Principles

Market studies often merit a public launch. When publicly launching a market study, authorities should provide information about the study's scope, the reasons for undertaking it and contact points for further information.

This can help stakeholders understand the process better, increase the level of stakeholder engagement and ensure that their engagement is focused on the relevant subject matter. Ultimately it may also enhance the quality of the market study and the reputation of the authority.

From the ICN Market Studies Good Practice Handbook

Public launch can be achieved through a variety of means, including:

- 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.

Good practices to consider when launching a market study:

- ✓ Explain the potential benefits of stakeholder participation, and how and when stakeholders can contribute to the market study.
- ✓ Communicate to stakeholders what (if anything) will be published at the end of the market study process.

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Step 5: Collecting and analysing information

Guiding Principles

Reliable, complete and accurate information is a crucial component of any effective market study.

Authorities should carefully consider which sources are likely to yield useful information, and how best to effectively gather and retain information from each source. When making the choice of which method of information collection to use, the authority should consider 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.

Authorities should tailor information requests to the needs of the particular market study. Authorities should inform stakeholders about why certain information is being collected and the timeframe for their submission. They should also be clear about the protections available and potential uses of sensitive and confidential information provided to the authority. This can help the authority secure information from reluctant sources.

Authorities can employ a range of different methods to analyse the quantitative and qualitative evidence they receive. It is important to identify and choose the most appropriate methodologies for analysis in each particular market study.

From the ICN Market Studies Good Practice Handbook

“Information can be obtained from a variety of domestic, international, private and public sources, and it may be more efficient to collect information from one source than it is to collect it from another.”

“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.”

“When organising commissioning and conducting research, authorities should be prepared to address potentially inconclusive research results.”

Good practices to consider when collecting and analysing information:

- ✓ Consider how to best conduct research.
- ✓ Various tools can be considered for the collection of relevant information e.g. targeted surveys, open calls for public input, use of information requests, public workshops, etc.
- ✓ Consider different sources of information.
- ✓ Use existing research and publicly available information where available.
- ✓ Before initiating the collection of information, prepare a list of what information should be collected and how.
- ✓ Select multiple complementary methods and tools for collecting information.
- ✓ Consult stakeholders on the scope and range of information requests, the timeframe for responding and the format in which information is to be supplied.
- ✓ Ensure that any information request is as clear and explanatory as possible. It can be useful to road-test questionnaires internally and/or externally before they are put to use.
- ✓ Consider how the information is managed by the authority.
- ✓ Ensure appropriate internal procedures to safeguard sensitive/confidential information once received.
- ✓ Consider how the information received fits with the authority's understanding of the market during the analysis.
- ✓ If a market study is running parallel with an enforcement investigation within the same market, carefully consider any interaction or duplication involving the gathering and use of information.

Step 6: Developing and securing outcomes

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After conducting a market study, authorities should consider developing any outcomes within the context of the purpose and the findings of the market study.

Outcomes can vary, and market studies can often involve more than one complementary outcome. If the goal of the market study is to gain a better understanding of a sector or issue, the outcome may simply be a better informed authority.

Authorities should keep outcome options under review throughout the course of the market study, in order to allow room for them to evolve in response to on-going stakeholder engagement, information collection and analysis, changes in government policy, etc.

Releasing interim reports or findings can help test and validate a study's findings prior to drawing conclusions, identify gaps in the study's analysis, and build consensus for proposed outcomes. Working to gain support for and secure outcomes in the context of a market study requires tactful advocacy to a wide range of internal and external stakeholders. This can include the competition authority itself, other authorities, marketplace participants and the public.

From the ICN Market Studies Good Practice Handbook

“Outcomes from a market study can vary, and can include:

- no action (market is working well; costs of remedies outweigh benefits);
- recommendations to governments and their authorities;
- competition enforcement and/or further advocacy;
- voluntary action;
- further study;
- stakeholder education (including consumer education); and/or
- direct action to restructure the market (where necessary powers exist).”

Good practices to consider when developing and securing the outcomes of a market study:

- ✓ If possible, support study findings with empirical evidence to increase the evidentiary rigor. Anecdotal evidence can be helpful to illustrate key points, and to supplement existing empirical data and findings based on it.
- ✓ Assess the costs and benefits of the proposed market study outcomes and possible side-effects.
- ✓ Consult stakeholders in developing the outcomes, test possible outcomes to assess their feasibility and their likelihood of implementation.
- ✓ Consider including relevant stakeholder engagement in the authority's additional efforts in support of market study outcomes.
- ✓ Engage effectively with business and industry where voluntary action is a desired outcome.
- ✓ Ensure internal clearance and consider feasibility before announcing any outcomes that involve the authority itself taking further action.
- ✓ Recognise the potential effect of media coverage of market study outcomes and develop a communications strategy.
- ✓ Carefully consider how to present recommendations to effectively advocate for change.
- ✓ Publish written outputs in a format that reflects the purpose of the study and the needs of the targeted audience.
- ✓ Consider following-up on market study outcomes but recognise that they may take time to achieve.

Step 7: Evaluation of Market Studies

After completing a market study and where resources permit, authorities should consider evaluating its effectiveness and its costs and benefits. 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.

Authorities can also consider measuring the effectiveness and costs and benefits of the market studies regime as a whole.

An evaluation of market studies allows the 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.

From the ICN Market Studies Good Practice Handbook

“Evaluation can help to identify whether post-study follow-up action is needed and can also help persuade governments to change policy or legislation, or business or consumers to change their practices in markets.”

Good practices to consider when conducting an evaluation of a market study:

- ✓ 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 and the available resources to dedicate to evaluation activities.

Where to find more information from the ICN about market studies

[Market Studies Good Practice Handbook \(April 2016\)](#)

You can find more in depth information and helpful advice on how to conduct market studies in the Market Studies Good Practice Handbook (April 2016).

[Market Studies Information Store](#)

In addition, the ICN also provides a web-based Information Store on market studies. Entries in the Information Store provide 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. The Information Store also provides links, where available, to the full published studies on participating members' websites.

Contact the ICN AWG co-chairs [here](#)

Find out more about how your authority can make a request through the Advocacy & Implementation Network Support Program for assistance in implementing ICN work product [here](#)