

INSIGHTS

MARKET INVESTIGATION TOOLS: MIND THE ENFORCEMENT GAP?

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Several European countries (Denmark, Germany, Italy and Norway), have recently adopted a market investigation tool, also sometimes referred to as the “new competition tool”. Other countries, such as Sweden and the Netherlands, may soon follow suit.

Market investigation tools can differ between countries, but the defining feature is that they allow competition authorities, following an in-depth market assessment, to impose remedies to address persistent competition problems in a market. The rationale is that they fill an enforcement gap, allowing authorities to intervene in markets where competition does not function well, but where there has been no breach of competition law.

However, some industry bodies and commentators view market investigation tools as

unnecessary over and above competition law and sectoral regulation, suggesting that they add uncertainty and can impose substantial burden on businesses over often multi-year investigations.

In this article, we seek to shed light on what to expect as market investigation tools gain popularity across Europe: (i) how do they work, (ii) what markets are investigated, (iii) what analysis is used, and (iv) how to strike a balance between benefits and potential drawbacks.

What is a market investigation tool?

In most countries across Europe, competition authorities can undertake 'sector inquiries' (also sometimes referred to as 'market studies', 'market analyses', or 'fact-finding investigations') to assess the state of competition in a given market or sector. Using sector inquiries, authorities can request information from companies and analyse the functioning of competition, outside of the context of exploring a potential breach of competition law.

While sector inquiries can be useful to understand the functioning of a market, they may lack the potential for long-term impact. Given their exploratory nature, absent any breach of competition law, sector inquiries can do no more than document concerns, raise awareness, and make recommendations, e.g. to the government, to sector regulators, or to market participants.

In contrast, market investigation tools give competition authorities power to directly intervene in markets even where no breaches of competition law are identified. There are variations in how market investigation tools function in different countries, but the defining feature is that, following a thorough "market investigation", the competition authority has the ability to address any competition issues identified with remedies of a behavioural, or even sometimes structural, nature, see Figure 1.

While the process varies between countries, it is often the case that a competition authority must first conduct a 'pre-investigation', e.g. a sector inquiry, to identify potential competition concerns and justify the opening of a formal market investigation. Following the more detailed market investigation phase, a competition authority is then allowed to impose remedies, if appropriate, to address concerns.

Beyond providing authorities with the power to intervene, market investigation tools are characterised by the following key principles:

- It is an *ex-ante* instrument, enabling a competition authority to proactively examine and address market failures *before* any infringement of competition law.
- The tool is *forward-looking*: the ultimate purpose is not to determine whether fault has occurred in the past but to ensure that the market functions well in the future.
- It generally has a *sector-wide* focus: while market investigations may occasionally focus on the structures and practices of an individual firm, the authority has the power to design and impose remedies which affect an entire market. This contrasts with remedies imposed as part of merger control, or abuse cases, which are applicable and enforceable against only the specific market participants concerned.

Market investigation tools are gaining popularity across Europe

The concept of a market investigation tool is not new. In the United Kingdom, the Competition & Markets Authority (the CMA and its predecessor the Competition Commission) has had it in its toolkit for decades. However, it has gained popularity in recent years. Accordingly, an increasing number of competition authorities in Europe now have the power to run market investigations and impose remedies.

By 2025, seven national competition authorities in Europe¹ have a market investigation tool or similar mechanism in place, see Figure 1.



¹ For the purpose of this article, the term Europe refers to the EEA plus the UK.

Other countries are also actively considering the adoption of a similar tool. In Sweden, the government recently indicated its intention to introduce a market investigation tool – after several years of advocacy from the Swedish Competition Authority.² Competition authorities in the Netherlands³ and Belgium⁴ have also requested similar powers but have not yet achieved similar political backing.

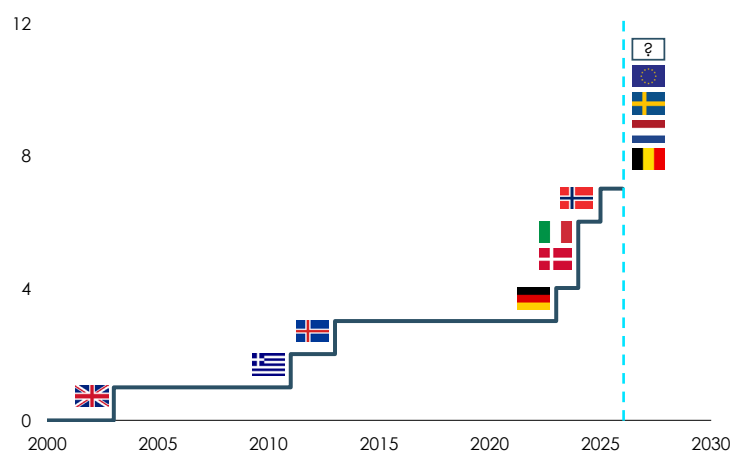
At the EU level, the idea of introducing a market investigation tool has also been considered. In 2020, the main motivation was to find a way of addressing systematic concerns relating to digital markets. Ultimately, these concerns were addressed by the DMA instead, and the idea of a broader *ex ante* tool that could be applied to all types of markets was thus shelved.⁵ However, in January 2024, the European Parliament explicitly called on the Commission to reassess the 'New Competition Tool' initiative, signalling that the option is once again under consideration.⁶

What markets are investigated?

Market investigation tools are used to investigate markets that are characterised by structural competition concerns or market failures. Accordingly, while the legal requirement to open a market investigation differs by country, there is typically an *a priori* notion that some market factors limit the functioning of proper competition.

For instance, in the UK, the CMA can open a market investigation if there are “*features of a market that have an adverse effect on competition (AEC)*”.⁷ In Greece, the requirement is framed slightly differently – and perhaps most pragmatically – so that market investigations can be used if “*the conventional tools of competition law are insufficient to address the lack of effective competition in a market*”.^{8,9}

Figure 1
Historical and potential adoption of the market investigation tools in Europe
Cumulative number of jurisdictions in Europe, 2000-2025



Note: Post-2025 adopting jurisdictions are indicative based on jurisdictions considering potential reforms.

Source: Copenhagen Economics

² OECD (2025). Market Studies and other Market Analysis Tools for Competition Authorities – Note by Sweden. [Link](#).

³ ACM (2025). Speech Martijn Snoep: The New Competition Tool, the why and the how. [Link](#); Cleary Antitrust Watch (2025), The Comeback of Sectoral Investigations: The Dutch and Belgian Competition Authority Announce Probes. [Link](#).

⁴ Cleary Antitrust Watch (2025). The Comeback of Sectoral Investigations: The Dutch and Belgian Competition Authority Announce Probes. [Link](#).

⁵ European Commission (2020). Impact Assessment for a possible New Competition Tool. [Link](#).

⁶ European Union (2024). European Parliament resolution of 16 January 2024 on competition policy – annual report 2023 (2023/2077 (INI)). [Link](#).

⁷ CMA, CMA market investigations. [Link](#).

⁸ European Commission (2020). New Competition Tool: Legal comparative study of existing competition tools aimed at addressing

structural competition problems with a particular focus on the UK's market investigation tool. [Link](#).

⁹ In Iceland, the bar is that “*circumstances or conduct which prevents, limits or affects competition to the detriment of the public interest*” ([Link](#)). In Denmark, market investigations can be set in motion if there are “*signs that there are conditions that weaken effective competition*” ([Link](#)), and in Norway if there are “*conditions which indicate that competition is or is in danger of being significantly restricted*” ([Link](#)). In Italy and Germany, a sector inquiry, which is a prerequisite for potentially imposing remedies, can be initiated by the Italian competition authority if “*where trade developments, pricing trends or other circumstances indicate that competition may be impeded, restricted or distorted*” ([Link](#)), and by the German competition authority if “*circumstances suggest that domestic competition may be restricted or distorted*” ([Link](#)). All quotes are automatically translated from national languages to English.

Consistent with the broad mandate to address competition problems across the economy, authorities have used market investigations to address many different types of markets, see Table 1.¹⁰

Many of the competition authorities listed have also conducted sector inquiries, or other forms of 'pre-investigations' during the same period as they have had the power to conduct market investigations. Thereby the number of formal market investigations may underestimate the total number of markets that were analysed by the authorities or in some way considered for intervention.

Mainly – but not exclusively – oligopoly markets

Historically, many of the markets covered by market investigations have been characterised by oligopoly market structures, such as insurance, retail banking, fuel and private healthcare markets.

This is consistent with the notion that oligopoly markets might be particularly prone to falling into a regulatory 'enforcement gap': markets in which no single player is dominant and where there is no evidence of illegal conduct but where competitive dynamics can still fall short of effective competition. Consistent with this, the UK regime was originally aimed at addressing structural problems in oligopolistic markets.¹¹

However, market investigations have also been used to target other types of markets, including markets with a single "incumbent" holding a strong position, where there is no evidence of a specific abuse, but where there is scope to improve competitive outcomes (such as airports in the UK¹², press distribution in Greece¹³, or waste collection in Germany¹⁴), or more dispersed markets, where concentration is low and yet the market may still produce sub-optimal competitive outcomes (such as funerals¹⁵, or veterinary services in the UK¹⁶).

Table 1
Several European countries have introduced a market investigation tool

COUNTRY	YEAR EFFECTIVE	OVERVIEW OF MARKET INVESTIGATIONS (AS OF JANUARY 2026)
UK	2003*	At least 21 market investigations, into a wide variety of markets****
Greece	2011	3 market investigations into the markets for construction, press distribution, and petroleum/fuel
Iceland	2013**	1 market investigation into the market for petroleum/fuel
Germany	2023	2 market investigations, into the markets for wholesale petroleum/fuel, and waste management
Italy	2024***	3 ongoing market investigations into the markets for passenger air transport, agricultural supply chain, and school publishing.
Denmark	2024	1 ongoing market investigation into the market for private insurance

Note: * While the UK Enterprise Act was passed in 2002, Part 4 on Market Investigations came into force in June 2003.¹ ** Although an amendment to the Icelandic Competition Act in 2011 granted the Competition Authority market investigation powers, the Authority adopted the relevant rules in 2013.¹ *** In 2023, the Italian legislature granted the Italian Competition Authority market investigation powers for a specific sector inquiry into passenger air transport. In 2024, the Council of State clarified that the market investigation powers apply to all sectors. **** The count of 21 market investigations in the United Kingdom is from a March 2023 consultation note prepared by the Norwegian Ministry of Trade, Industry and Fisheries. The number of market investigations is higher as of 2026.

Source: Copenhagen Economics based on: Nærings- og fiskeridepartementet (2023). Høringsnotat - Lov om endring av lov 3. mai 2004 nr. 12 om konkurranse mellom foretak og kontroll med foretakssammenslutninger (konkurranseloven) om innføring av nytt markedsetterforskningsverktøy, p. 30. [Link](#).
Year effective: UK: Enterprise Act 2002 (c. 40), Part 4. [Link](#); GR: Law 3959/2011 on the Protection of Free Competition, art. 11. [Link](#); IS: Icelandic Competition Authority (2013). Rules on the market investigations carried out by the Competition Authority. [Link](#); DE: 11th amendment to the German Competition Act. [Link](#); IT: Consiglio di Stato - Parere 29 gennaio 2024, n. 61, para. 4. [Link](#); DK: The Danish Competition Act - Consolidation Act No. 1150 of 3 November 2024, para. 15(f). [Link](#); NO: Konkurransetilsynet (2025). Market investigation comes into effect today. [Link](#).

¹⁰ Note that the table includes both past and ongoing market investigations, as of January 2026.

¹¹ CMA (2024). Market Investigations: 75 years of UK experience. [Link](#).

¹² CMA (2009). BAA airports investigation (CC). [Link](#).

¹³ Hellenic Competition Commission (2021). Market Investigation in the Press Distribution Sector. [Link](#).

¹⁴ Bundeskartellamt (2025). Bundeskartellamt orders Rethmann Group to notify future mergers. [Link](#).

¹⁵ CMA (2021). Funerals market study. [Link](#).

¹⁶ CMA (2025). Veterinary services for household pets. [Link](#).

Based on the overview provided in Table 1, some sectors appear particularly prone to market investigations, for instance:

- Financial markets (e.g. insurance, banking)
- Energy and fuel markets (e.g. petroleum, electricity, electric vehicle charging)
- Industrial markets (e.g. construction, house-building, cement)
- Digital markets (e.g. advertising, cloud and mobile ecosystems)

Notably, while the CMA has, in the past, used market studies to explore digital markets, it is unclear if this trend will continue given that both the EU and the UK now have parallel *ex ante* regimes with some similar characteristics, focusing on digital markets specifically.

Irrespective of the industry, authorities will prioritise markets with structural competition issues. Based on a high-level assessment of past market investigations, features which make a market particularly prone to an investigation include:¹⁷

- High levels of concentration
- High barriers to entry
- High returns, persistently and substantially above a competitive benchmark
- Vertical integration and/or the potential for discriminatory conduct
- Pricing behaviour that is inconsistent with effective competition, e.g. weak pass-through of cost changes
- Customer inertia, e.g. due to high switching costs, low transparency, or behavioural biases

Apart from these market features, competition authorities may also choose to focus on “strategically important” and/or “highly sensitive” markets.¹⁸

How are markets investigated?

Market investigations allow competition authorities to undertake a holistic review of how a market functions to investigate which structures or behaviours may be driving sub-optimal consumer outcomes.

In contrast with competition law proceedings, where the types of analyses are often well-established, competition authorities have significant discretion concerning the types of analyses undertaken in the context of a market investigation process. This is because the focus is not on whether certain legal tests are satisfied, but rather on the broader question of whether

there are barriers to effective competition and how to address them. Accordingly, analysis is inherently focused on effects, consumer outcomes, and possible solutions.

To illustrate how such a holistic assessment is often undertaken, we review the use of the market investigation tool in the UK, where it has been in place the longest with the largest number of concluded investigations. Analyses in the context of market investigations can generally be grouped in the following categories:

1. Market structures – whether there is market power and/or how the competitive structure of the market may otherwise affect market outcomes;
2. Practices and behaviours – whether there are specific market practices that can have a negative impact on consumer welfare;
3. Remedies – whether there are certain remedies that can help mitigate or solve the identified concerns without having adverse effects.

Following market investigations, the CMA has also – on occasion – conducted *ex post* assessments to assess whether the imposed remedies delivered the intended benefits.

In the following, we briefly outline some of the key elements of the CMA's (and its predecessor the Competition Commission) approaches to each of these three types of analyses, as well as *ex post* assessments. The authorities that have recently been given market investigation powers may adopt similar approaches.

Market structures

The starting point for most market investigations is to understand the market characteristics, market structure and the potential existence of market power. Market power can exist at different levels of the supply chain, and *vis-à-vis* different customers or other players in the market.

In the context of antitrust enforcement, the analysis conducted by authorities relating to market power often focuses significantly on determining the relevant market and assessing market power within the defined markets, e.g. to assess whether a specific player is dominant. In the context of market investigations, market definition can also play a role as “*a useful tool, but not an end in itself*”, while, for example, the CMA is not required to provide a precise definition of the

¹⁷ CMA (2024). Market Investigations: 75 years of UK experience. [Link](#).

¹⁸ CMA (2024). Market Investigations: 75 years of UK experience. [Link](#).

market to which an investigation relates.¹⁹ This gives authorities the freedom to conduct a holistic assessment of competitive constraints, exploring additional perspectives, such as profitability measures and customer behaviour.

A good example of how the CMA has taken a more holistic approach to assessing market power is its private healthcare market investigation, in which the CMA investigated the impact of market structure on prices paid by private health customers along two dimensions: first, it assessed whether having a strong national network of hospitals affected the bargaining power of hospital owners vis-à-vis insurance operators; second, through a sophisticated econometric model, the CMA assessed the impact of local market concentration (measured by a hospital operator's share of patients in a postcode area) on the prices ultimately paid by customers for different health treatments.²⁰

Practices and behaviours

A market investigation will also analyse the practices and behaviours of firms and consumers to assess whether there are any frictions which limit the effectiveness of competition. In contrast with traditional competition law investigations, the focus is less on identifying conduct that is specifically exploitative or exclusionary in nature, and rather on identifying any kind of sub-optimal practices or behaviour by all market participants which reduce consumer welfare. Accordingly, the authority can take a broad approach to identifying issues and formulating 'theories of harm' for empirical analysis and consultation with market stakeholders.

An example of an analysis of behaviours can be found in the CMA's investigation into retail banking. Despite noting the existence of a strong competitive fringe, the investigation found that customer inertia and weak customer response to differences in prices and service quality meant that many banks had limited incentives to compete intensely for personal current accounts. The CMA thus sought to understand why customers seemed reluctant to shop around, and used behavioural economics and survey evidence to inform its assessment of the underlying reasons for limited customer engagement and appropriate remedies to address the issues identified.²¹

Remedies

Where the authority identifies systemic issues that undermine the effectiveness of competition, it will assess whether it is possible to address these issues with

specific interventions. The authority can apply tailor-made analyses to assess and market-test different remedy proposals.

Relative to regular enforcement proceedings, competition authorities have more flexibility to consider 'fixes' that are not directly related to firm behaviour. Furthermore, especially in comparison with merger assessments, authorities generally have more time in market investigations to consider different remedy approaches and test solutions with the market.

For example, in the context of its market investigation of private motor insurance, the CMA identified a practice whereby a separation between cost liability and cost control in non-fault insurance claims resulted in very high car rental costs and friction costs, ultimately leading to higher consumer prices. The CMA considered a number of potential remedies to address the issue, including (i) moving to a no-fault insurance system for replacement cars whereby insurance companies would always have to pay for their own customers' replacement cars and customers would choose the level of replacement car they desired for any, fault or non-fault, accident, as well as (ii) the remedy it ultimately applied, which was imposing caps on car rental hire rates by category. The CMA carefully analysed each of the proposed remedy options, considering their timeliness, efficacy, the responses from consumers and the potential for circumvention. Ultimately, the CMA adopted a cap rate in large part because it considered that the alternative of implementing a no-fault system would reduce welfare by removing the right to a replacement car for many not-at-fault customers. This analysis also led the CMA to adopt further measures designed at avoiding circumvention, such as restricting credit hire companies' ability to directly pay fees to not-at-fault customers to induce them to hire more expensive replacement cars.²²

Ex post assessments

There is no statutory requirement for the CMA to conduct a formal impact evaluation following each market investigation. Nevertheless, the CMA has also been able to learn from past remedies used in market investigations through its ongoing monitoring of compliance with the remedies imposed,²³ and some investigations have received a dedicated ex post review.

For example, the CMA undertook an ex post review of the structural remedies that its predecessor, the Competition Commission, imposed as a result of a market investigation of BAA, the operator of several UK airports. Having (amongst other remedies) ordered BAA

¹⁹ Competition Commission (2013). Guidelines for market investigations: Their role, procedures, assessment and remedies. Para 133. [Link](#).

²⁰ CMA (2017). Private healthcare market investigation. Final report and its appendices. [Link](#).

²¹ CMA (2017). Retail banking market investigation. Final report and its appendices. [Link](#).

²² CMA (2015). Private motor insurance market investigation. Final report and its appendices. [Link](#).

²³ CMA (2026). Markets regime. Guidance. [Link](#).

to divest Gatwick, Stanstead and Edinburgh airports, the CMA's ex post review identified and quantified several benefits ranging from airport fees and quality of service to a growth in passenger numbers and cost efficiencies. The review also uncovered unintended consequences and lessons for future processes.²⁴ The CMA is currently (as of February 2026) running a consultation concerning the effectiveness of altogether 33 remedies resulting from market investigations, which may provide the authority with useful insights about the benefits and drawbacks of some of the more recent interventions.²⁵ In all, given the long track record of conducting market investigations and the wide spectrum of remedies imposed across sectors, experiences from the UK provide useful insights for authorities on the effectiveness and proportionality of different types of intervention.

Balancing benefits and potential drawbacks

Market investigation tools give authorities greater freedom to tackle competition issues that have a negative impact on consumer welfare. When used well, they can address persistent structural issues that traditional enforcement may struggle to capture and can thereby generate substantial benefits. Illustrating this, the CMA estimated that the impact of its work on "market studies and market investigations" led to annual average consumer benefits of £1717.8 million for the period 2022 to 2023 and 2024 to 2025 – amounting to around half of the CMA's overall impact.²⁶

At the same time, the breadth of these powers can make the resulting legal framework less predictable for businesses, and the coexistence with ordinary anti-trust rules and sector-specific regulation can risk leading to overlap and inconsistent outcomes. Market investigations can also be resource-intensive exercises for both authorities and companies. Accordingly, the practical operations raises questions regarding proportionality and efficient use of public resources.

Experience so far suggests that practice will differ across countries, with some authorities (e.g. the CMA) making extensive use of the tool and others deploying it only sparingly. How this balance between flexibility, legal certainty and resource-intensity will be struck in newer regimes remains to be seen and will depend on how actively authorities choose to deploy their new powers.

²⁴ CMA (2016). BAA airports: Evaluation of the Competition Commission's 2009 market investigation remedies. [Link](#).

²⁵ CMA (2026). Strategic review of CMA markets remedies. [Link](#).

²⁶ CMA (2025). CMA Impact Assessment 2024 to 2025. [Link](#).

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