

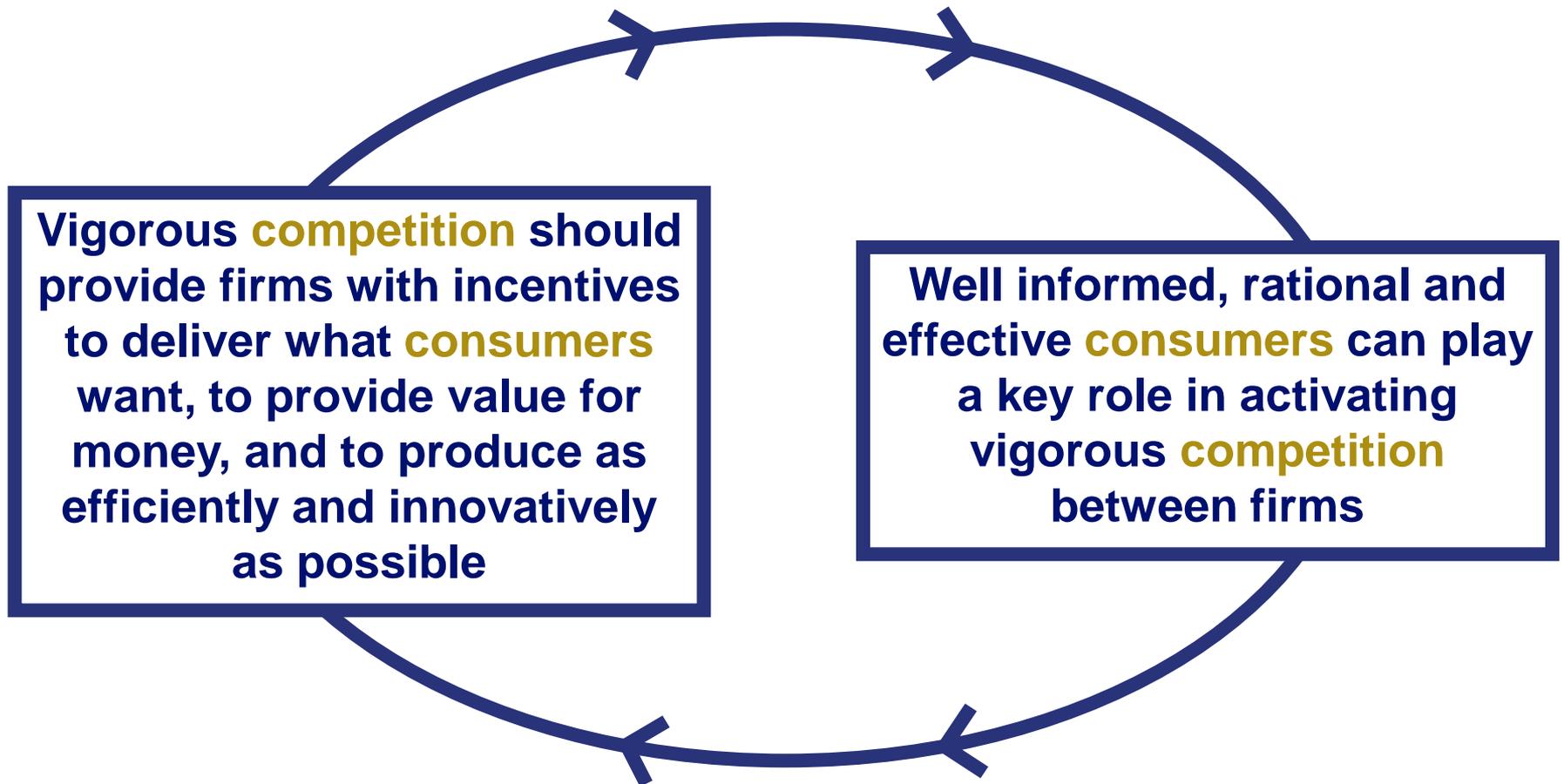
A perspective from a national authority

Nigel Cates

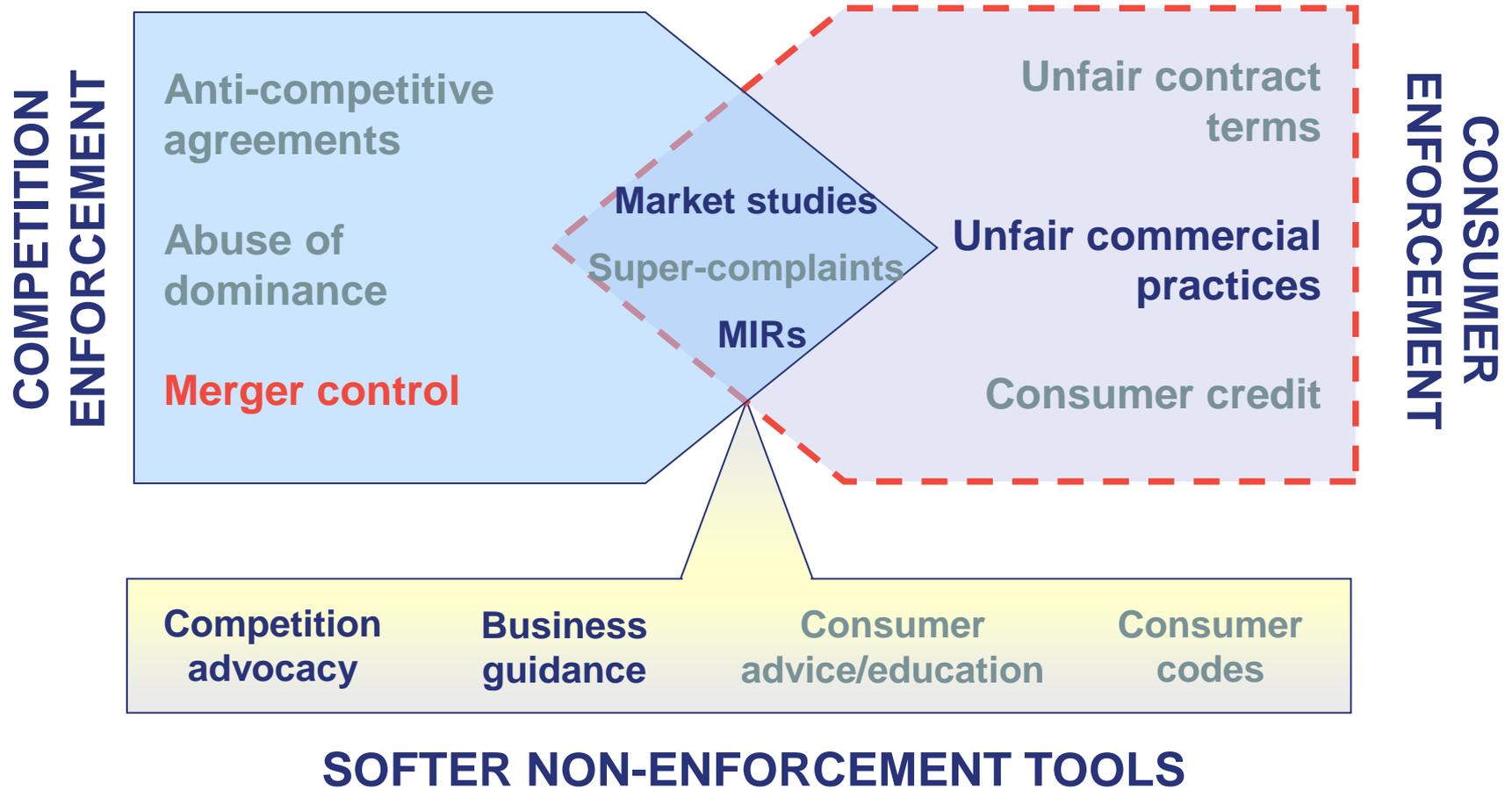
**Director, Goods and Consumer
Group**

Office of Fair Trading

Competition and consumer policy: a virtuous circle for consumers

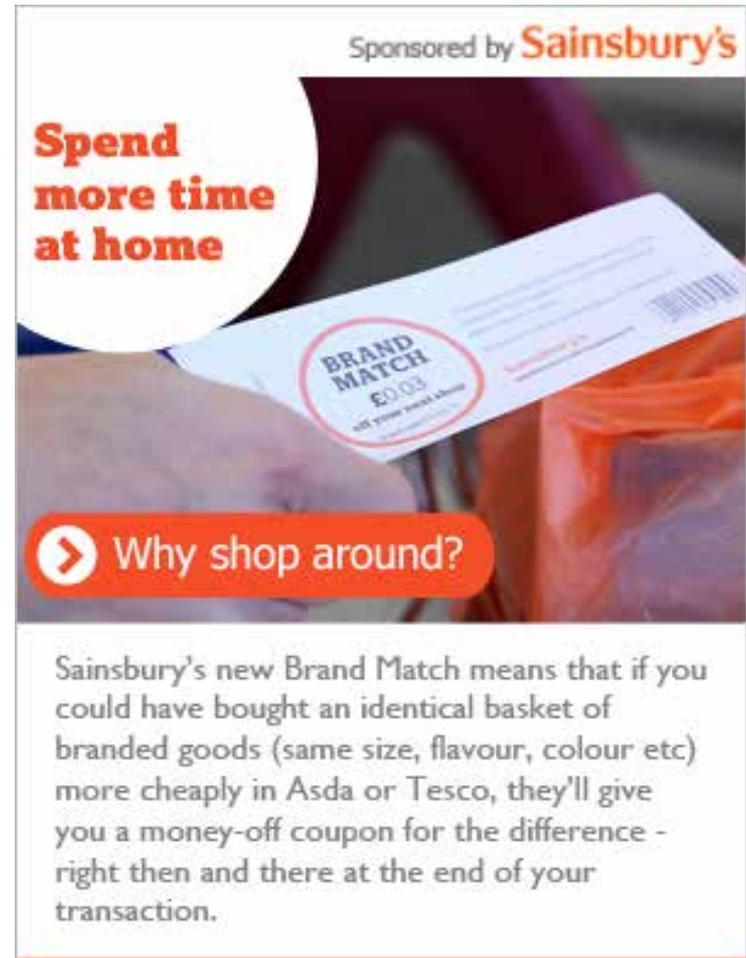


OFT's competition and consumer tools



Some pro-competitive aspects of brands

- Positive incentives for brand owners to maintain product characteristics
- Ease entry into new markets
 - Relative to starting from scratch
- Enhanced intra-brand competition (more homogeneous)
 - E.g. supermarket competition on brands
 - Although.....??



Sponsored by **Sainsbury's**

Spend more time at home

BRAND MATCH
£0.03
off your basket total

Why shop around?

Sainsbury's new Brand Match means that if you could have bought an identical basket of branded goods (same size, flavour, colour etc) more cheaply in Asda or Tesco, they'll give you a money-off coupon for the difference - right then and there at the end of your transaction.

Some less positive properties of brands

- **Can soften inter-brand competition**
 - Due to more perceived product differentiation
 - And ‘must carry’ nature
- **Can create barriers to entry**
 - Brand proliferation strategies
 - ‘Fighting brands’
- **Can be used to justify restrictions on competition (‘free-riding’)**
 - E.g. vertical restraints (RPM)
 - E.g. Law against ‘imitations’



The 'free riding' issue

- Brand-owners invest in product innovation and branding to create demand
- Downstream retailers can play a key role in this too
- 'Free-riding' can occur:
 - By lookalikes/imitations
 - By 'no frills' retailers
- This can damage brand *directly*, e.g. if poor quality provided...
- ...or *indirectly* by disincentivising investment in brand and product innovation

Step into middle England's best loved department store, stroll through haberdashery to the audio visual department where an awfully well brought up young man will bend over backwards to find the right TV for you **then go to [dixons.co.uk](https://www.dixons.co.uk) and buy it.**

Free riding' - the counter-arguments

- Consumers are rarely actually confused
- Lookalike packaging can provide a useful (not misleading) signal
- Lookalike brands can grow into major brands in their own right (i.e. entry strategy)
- More product homogeneity can enhance price competition
- There are more direct ways to incentivise retailer brand investment



OFT interventions to date

- Groceries market study / reference to CC
 - Own-label - positive effects – increasing competition
- Merger control
 - Large number of supplier mergers
- Consumer protection
 - Nothing direct to date – focus on other areas
 - Misleading advertising
 - Behavioural economics - confusopoly?

Lookalike: case for intervention?

Why should OFT act?

- Freedom of consumers to choose the product they want
- Incentives for manufacturers to invest / innovate
- Competition on the merits
- Choice framing by supermarkets / time pressure on consumers
- Increasing costs of L&D and advertising

Why not act?

- Existing IP / TM remedies
- UCPD – consumer protection
- Recital 14 – not intended to reduce consumer choice
- Lack of direct consumer harm / in fact consumer benefits
- Good spend of public money?

OFT / CMA – going forwards

- **Open mind – markets are changing – focus on effects**
- **Own labels NPD exceeded brands for first time – 2011**
- **Monitoring structural issues / buyer power**
- **Focus on consumer harm**
- **Role of private actions?**

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