

Similar packaging

Assessing consumer detriment and business harm

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Oxford Symposium;

Trends in Retail Competition



INTELLECTUAL
PROPERTY OFFICE

Agenda

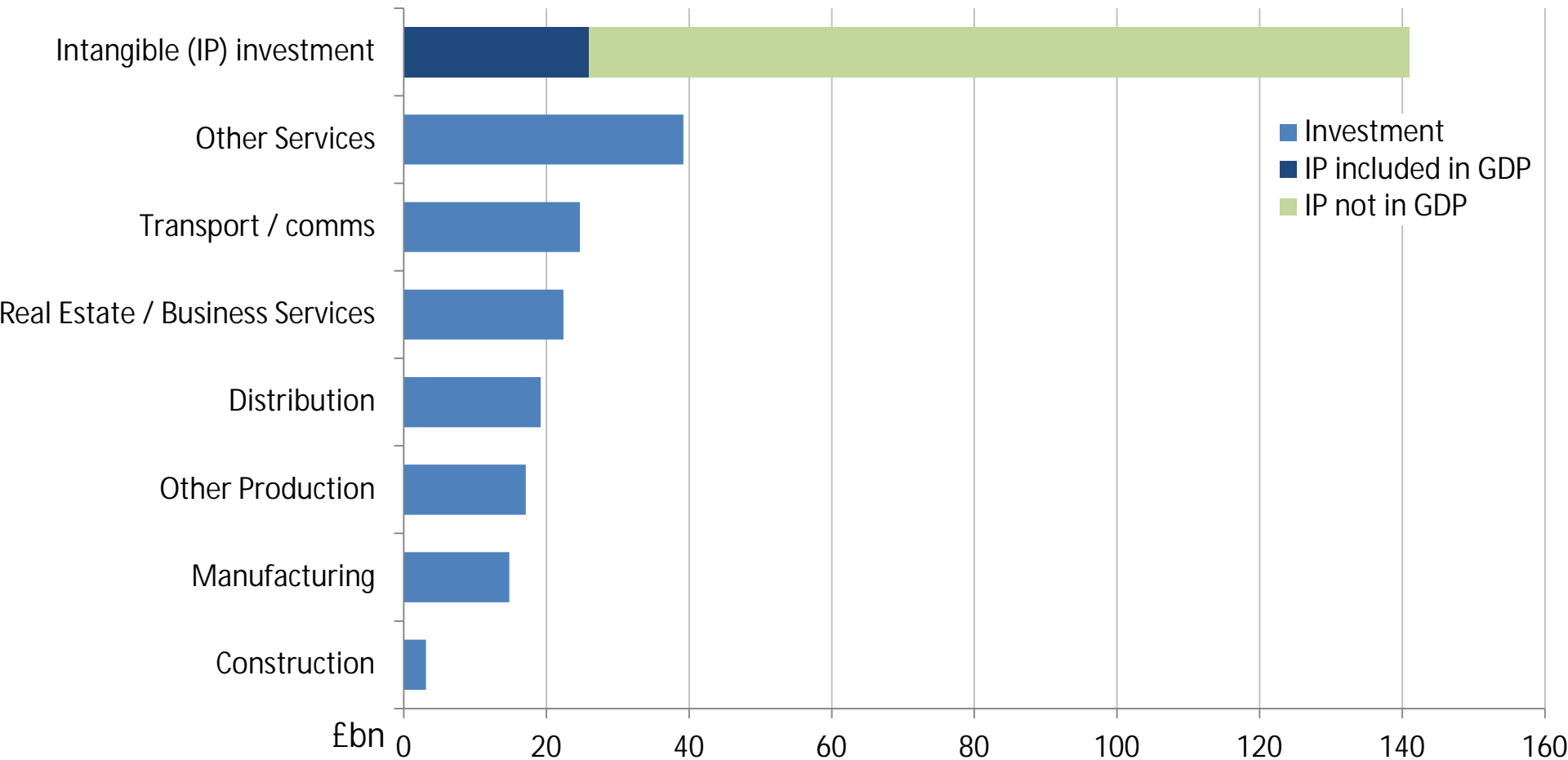
- **Big picture of IP research and reform**
- **Hargreaves review – main conclusion**
- **Lookalike research, background**
- **Emerging findings**
 - **International comparisons**
 - **Consumer confusion?**
 - **Business harm?**
- **Next steps**

IPO Economic Research

- Programme started in 2010
 - Set of projects to understand IPRs in UK economy
 - Developing IPO and international data
 - Shared concepts and projects with other IP offices
- Main results so far
 - Quantifying IP investment by UK business
 - Evaluating university – business knowledge transfer
 - Studies on IP enforcement
 - Understanding incentives in trademarks and patents
 - In depth look at UK design and rights
 - Copyright and business impact

What the National Accounts **don't** tell you

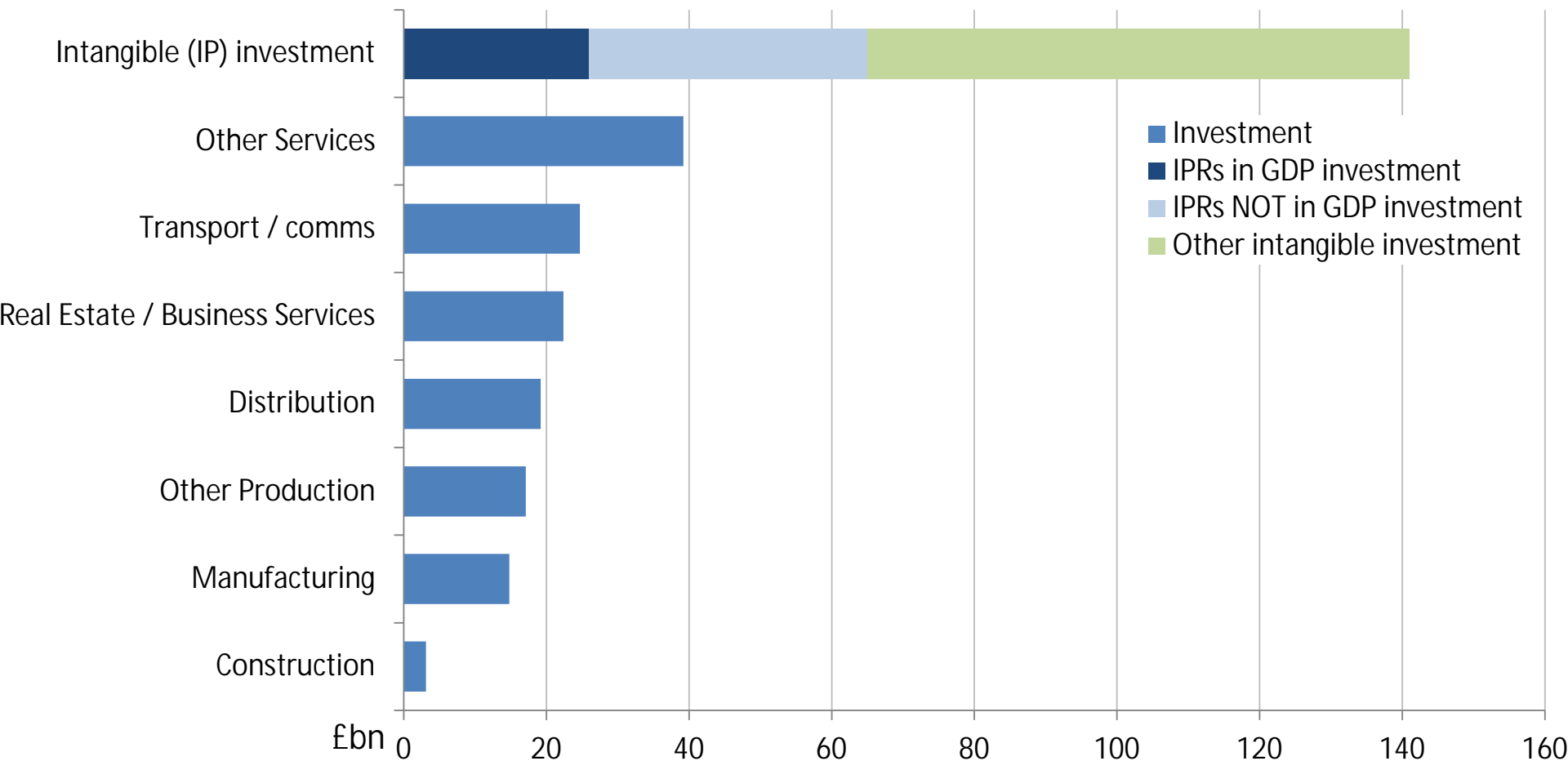
.... the 'missing investment' for growth



Source: NESTA Innovation Index

£40bn uncounted investment in IP Rights

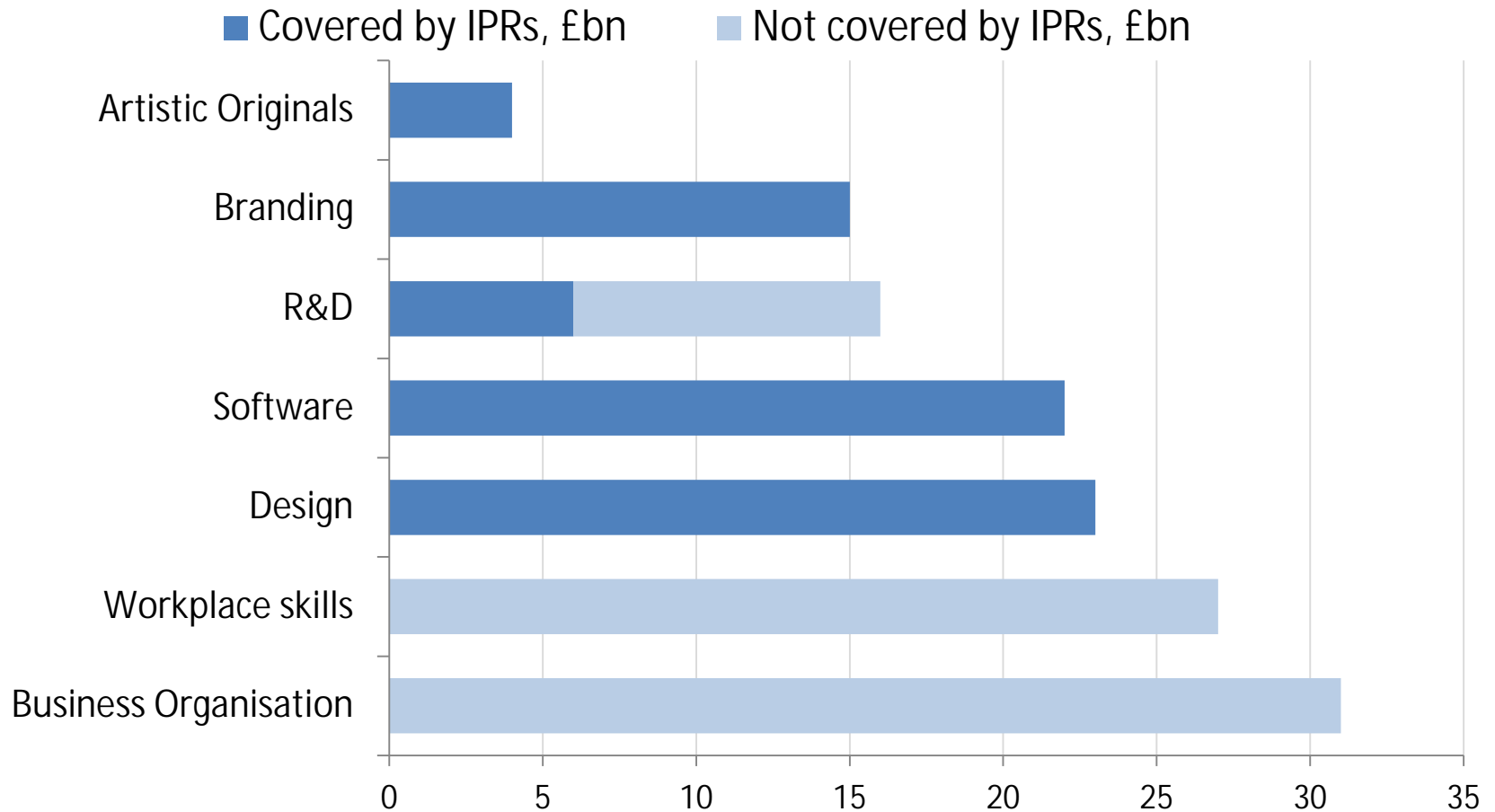
.... in design, patents, trademarks and uncounted copyright



Source; Imperial College for IPO

'Tradeable' intangibles in five areas

.... branding is a significant part of the total



Source; Imperial College for IPO

The Prime Minister's question.....

“The current intellectual property framework might not be sufficiently well designed to promote **innovation** and **growth** in the UK economy”

July 2010

Hargreaves' Review conclusion:

“Could it be true that laws designed more than three centuries ago... are today
obstructing innovation and
economic growth?”

The short answer is: **yes.**”

May 2011

IPR	Does it work?
Trade marks	Yes
Patents	Mostly
Design	Needs work
Copyright	Creating barriers

Why lookalike research?

- Questions raised at IPO Brands Conference
 - Do lookalikes damage functioning of brands?
- Set out to seek evidence on
 - How does UK legal framework on UCPD differ from other markets?
 - Are outcomes in UK different?
 - Are consumers misled by lookalikes on the shelf, and are they disadvantaged?
 - Do lookalikes disadvantage brand manufacturers and undermine innovation investment?

What we know

- Evidence from AIM / BBG commissioned research
 - Manufacturer brands tend to be more innovative
 - If they don't innovate, brands decline
 - Brands can be an efficient way of getting new products to market
- Evidence from IPO commissioned research
 - Trademarks help smaller firms survive and grow
 - They help firms generate more and better jobs
 - There doesn't seem to be a 'bias to incumbents'

Emerging findings - Literature

- A growing mountain of studies!
 - Plenty of evidence on progress of 'own brands'
 - Brands which are not leaders are main casualties
- Role of lookalikes in eroding brand innovation
 - Evidence that lookalikes can substitute for manufacturer brands which are not leaders
 - Some evidence that lookalikes trade on 'familiarity'
..... but familiarity or trust enables innovation.

Emerging findings - Legal

- Hogan Lovells, most recent EU review
 - UK out of step and has inferior remedies to most member states
- Other sources
 - Gowers recommended stronger protection than passing off.
 - German comparison; 'unfairness by avoidable deception regarding commercial origin'
 - No data on interim injunctions ... which make German system work.

Emerging findings - consumers

- Surveyed 330 consumers, 1160 comparisons across 12 categories
 - A manufacturers brand
 - A lookalike product
 - A control (a visually dissimilar brand)
- Asked about similarity, quality and origin
 - Rated comparators on a 1-5 score
 - Against the manufacturers brand

Consumers say sourcing common

Strong link between visual similarity and perception of origin

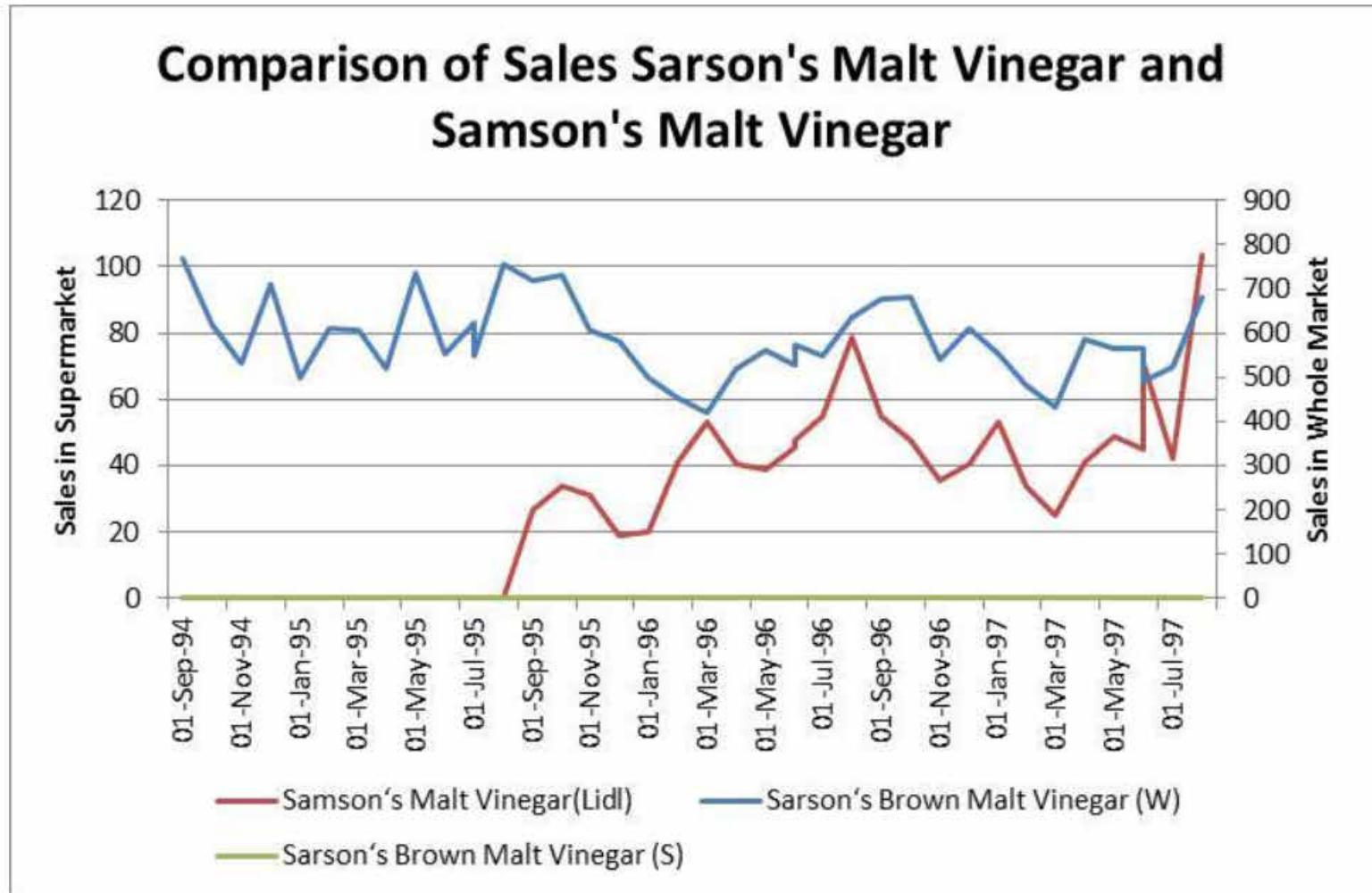


Emerging findings - sales

- Kantar data used for same products
 - To understand correlation brand / lookalike
 - To understand correlation brand / control
 - To see if there is a difference
- Data suggests different outcomes by product
 - Some significant brand / lookalike substitution
 - More cases where relationships are blurred
 - Some differences in timescale for significant relationships

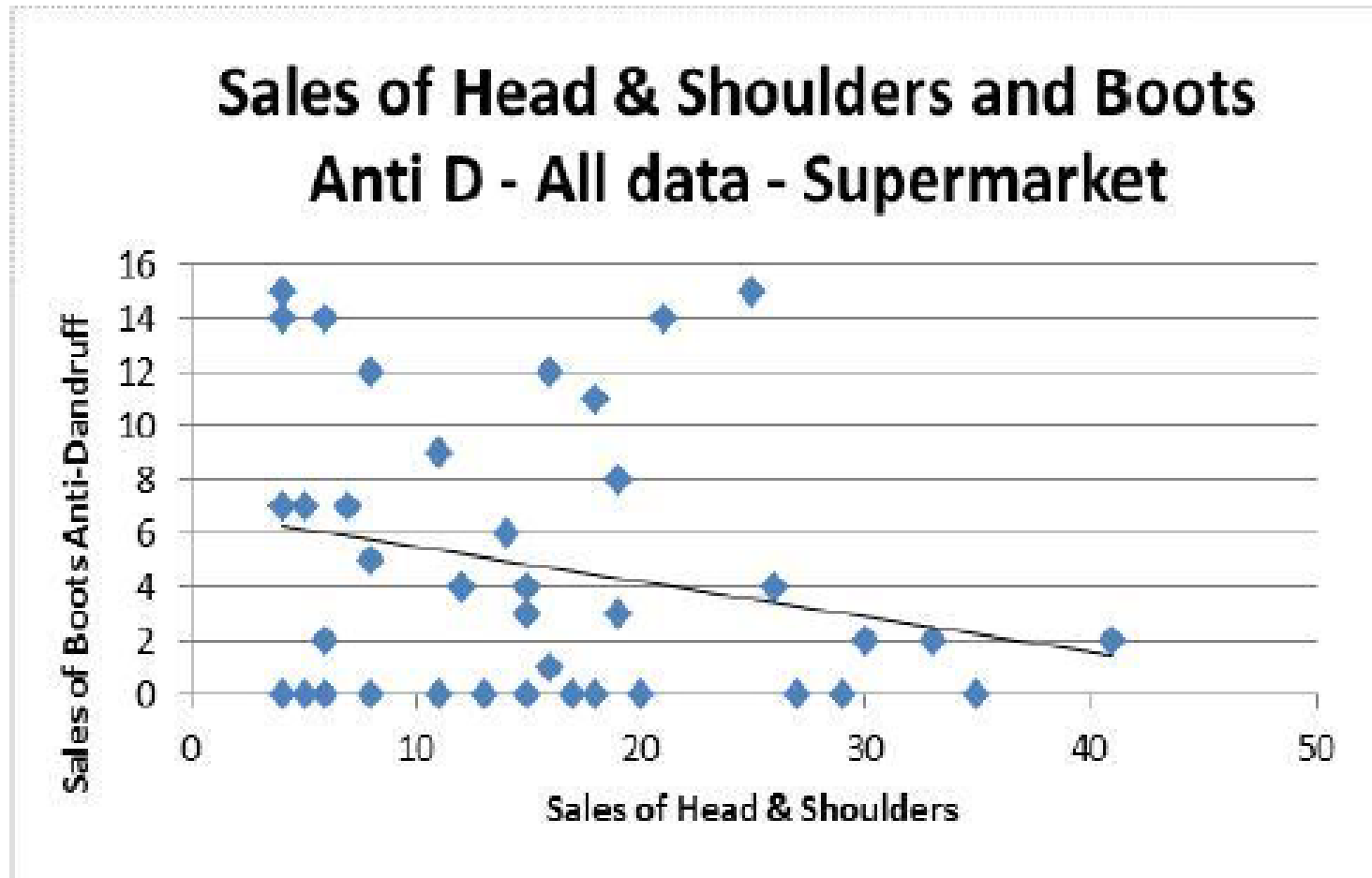
Emerging findings - sales

Some look convincing; others are harder to read



Emerging findings - sales

Some show relationships – with gaps



Next steps

- Peer review and further analysis
 - Large amount of data to understand
 - What are factors where substitution significant?
 - What is the role of price?
- Consultation on data and options
 - Where might lookalikes qualify as unfair?
 - Where do they 'blur' brands
 - Is there any effect on capacity to innovate?

Thanks for listening

Details of UK IPO research at

<http://www.ipo.gov.uk/pro-ipresearch.htm>