

Competition in Public Service Markets

CCRP City University Competition Round Table

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Competition and Markets Authority

Overview

- CMA's mission
- How the CMA defines public service markets (PSMs)
- What sort of competition concerns arise in public service markets and CMA's tools to address them
- Looking forward

CMA's mission

- “Extend the frontiers of competition into new areas”
- Government’s strategic steer to the CMA: the CMA “has a key role in challenging government where government is creating barriers to competition”

PSMs are created when government pays for services via competitive mechanisms

		Who pays (direct)?	
		Individual	Government
Who chooses the provider?	Individual/Proxy	Banking (Private market)	State schools/Hospitals (Competition 'in' the market)
	Government	TV licensing (Blended model)	Work programme for unemployed (Competition 'for' the market)

PSMs usually differ from private markets but can still benefit from effective competition

- **Potential differences**

- Lack of price signals
 - Prices fixed in hospitals, universities
 - No direct payment (eg some local authority services)
- Social value of services even if not profitable often reflected in some form of “universal service obligation”
 - Postal services, some education and care provision, some public transport services
- Complex objective functions
 - Even where providers independent (foundation trusts, some universities & colleges)
- Benefits of competition not always accepted (and sometimes actively rejected) by providers/users/policymakers
 - Health, education and rail

PSMs usually differ from private markets but can still benefit from effective competition

- **Potential differences (continued)**
 - Funding from taxation means some rationing needed (eg role of GPs or NICE)
 - Capital investment funded by taxpayer means strong incentive to avoid duplication
- **Similarities**
 - Active public service users and a dynamic supplier base can drive efficiency, quality and innovation
 - Potentially large gains to be had from market restructuring and the introduction of competition as in similar industries in the past (telecoms, airlines, energy)
 - Different countries experimenting with different models (e.g., school voucher schemes in the US and Sweden, more provider competition in US healthcare)

We investigate a range of competition concerns in PSMs

- Whilst we need to be alive to the different constraints affecting PSMs, there is an important role for competition authorities in making sure competition works in the interest of service users
- The main issues we investigate are:
 - Mergers that might result in a lessening of competition
 - Anti-competitive agreements between undertakings in PSMs
 - PSMs that do not appear to be working well for consumers
 - Policies that have a negative impact on markets

Mergers in PSMs may result in a substantial lessening of competition

Our concerns in theory

The CMA considers the impact of mergers on:

- Quality of services
- Prices
- Investment and innovation
- Access to services and choice
- Efficiency

Our concerns in practice

Hospital mergers

Hospitals have incentives to compete in relation to elective inpatient and outpatient specialties because:

- patients (and/or GPs) exercise choice
- quality is a factor driving choice.
- That choice drives funding

Rail franchises

Common ownership between passenger franchises and:

- Overlapping rail franchises
 - Bus/coach services
 - Open access operators
- can create risks to competition

We enforce against anti-competitive agreements between undertakings in PSMs

Our concerns in theory

- The CMA investigates anti-competitive behaviour, including agreements to:
 - fix price
 - engage in bid rigging (for example, cover pricing)
 - limit production
 - share customers or markets
- Exclusion in CA98 S3, para 4 in respect of “services of general economic interest”. Obviously the conferring of SGEI status should be proportionate.

Our concerns in practice

- The OFT investigated anti-competitive behaviour in public markets
- **2014 Supply of Medicines to care homes:** a market-sharing agreement in relation to the supply of prescription medicines to care homes. OFT imposed a fine of £370,226
 - **2009 Construction:** 104 firms engaged in illegal anti-competitive bid-rigging activities on 199 tenders from 2000-06, mostly in the form of 'cover pricing'.

We study markets that do not appear to be working well for public service users

Our concerns in theory

The CMA could conduct markets work for a range of reasons including to explore concerns about:

- regulatory and other economic drivers in a market
- Patterns of consumer and business behaviour particularly in public markets where the exercise of consumer choice may be relatively new and unfamiliar.

Our concerns in practice

The CMA conducted market studies in a number of public markets

- **Dentistry:** Identified concerns about transparency of prices, availability of treatment plans, contestability of the NHS Dental Contract
- **Higher education:** Identified concerns about the design of regulation and awareness of the application of consumer law to the sector

We advise government and public officials when policy risks distorting competition

Our concerns in theory

The CMA seeks to provide advice and challenge to public officials to assess the impact of policy on competition including:

- enabling new providers to enter and failing providers to exit
- preventing excessive concentration of providers
- promoting genuine choice
- ensuring the right incentives are present
- disproportionate or excessive regulation going beyond what is necessary to protect the public interest

Our concerns in practice

Examples of where CMA and its predecessors have intervened:

- Alcohol pricing
- Regulators' remits and rulebooks
 - Higher Education
 - Financial Services
 - Oil and Gas (Wood Review)
- Informal CMA advocacy interventions from flood reinsurance to reform of compensation for whiplash injuries

Current policy preoccupations put a premium on PSMs that work for users and taxpayers

- **Restraints on public expenditure**

- 1.) Procuring well (and avoiding, or at least spotting, bid rigging)
- 2.) How to use market mechanisms to get more for less

- **Public service reform**

- 3.) Ensuring consumers can exercise choice effectively
- 4.) Maintaining competitive pressure where contracts are big and contracting rounds infrequent (employment services, probation)
- 5.) Extending the frontiers of competition (rail, water)

- **Entry, exit and innovation in public markets**

- 6.) Preventing regulation from inhibiting innovation or tilting the playing field
- 7.) Allowing orderly exit is key to dynamic competition in these markets (e.g., GP practices, hospitals, universities)