



COMPETITION APPEAL TRIBUNAL

# Competition Law and Public Service Markets

Centre for Competition and Regulatory Policy  
Competition Round Table, 22 January 2015

---

**Peter Freeman CBE QC (Hon)**

---

# Competition and public service provision

‘Successive governments have recognised how competition and market based solutions can play a part in public service delivery, with the ability to deliver lower prices, increase efficiency and offer greater choice for consumers’

CMA, Strategic Assessment (para. 5.29)

# Competition and public service provision

‘Competition between health providers is accepted by most politicians, journalists and health economists as the best way to motivate people in the NHS and to improve efficiency. It does not - and is hugely costly’

Letter to ‘*The Times*’ 8 January 2015

# Competition law

- A means to an end
- Prohibition and market improvement
- State aid and public procurement law
- Application to public markets



# Legal issues (1)

- Antitrust
  - ‘Undertakings’
  - ‘Services of general economic interest’ (Article 106, TFEU)
  - *Ambulanz Glöckner* (C-475/99)
  - *Bettercare* ([2002] CAT 7)
  - *FENIN* (C-205/03 P)

# Legal issues (2)

- Market investigations
- Merger control
  - The Bournemouth/Poole Hospitals case
- State aid
- Public procurement

# Conceptual issues

- Limited price freedom
- Consumer behaviour
- Less profitable services
- Threat of exit

‘Applying competition law to public markets is complex and largely untested’ (CCRP Paper 28, para. 21)

# Undesirable consequences?

- Fragility of trust in competition in private sector markets
- Possible spillover effect to public service markets?
- Examples
  - Transport
  - Energy
  - Health
  - Education



# Need to tread carefully?



‘The CMA has a role to play in considering whether recently implemented market-based reforms have delivered the benefits of choice and competition in practice. We can advise government on the design of market reforms and also help government design procurement’

CMA, Strategic Assessment (para. 5.35)