

Local authorities and competition

Summary

1. Local authorities affect local competition in a range of ways:
 - as purchasers
 - as suppliers
 - as regulators
 - as market shapers.

When competition works well in the markets involved, authorities achieve their objectives (including securing good value for the public purse), local businesses can prosper and users get good public services. But competition does not always work well; there are risks of unintended consequences in local authorities' involvement with markets, and awareness of those risks varies significantly between authorities.

2. In response to a request from central Government¹, the CMA has assessed the potential impact of local authority intervention across a range of markets, focussing attention where the opportunities are greatest. We have:
 - Offered advice about specific markets where the CMA has particular expertise, for example in the market for municipal waste.
 - Built competition expertise within local authorities so that policy makers know how to support the better functioning of markets, for example by adding to the Local Government Association's (LGA) Enterprising Councils guidance and through the launch of the CMA's 'Screening for Cartels' data analysis tool.
 - Challenged local authorities where unnecessary restrictions on competition are being created, for example in the regulation of private hire vehicles.

¹ HM Treasury, '[A better deal: boosting competition to bring down bills for families and firms](#)' (November 2015)

3. This short report sets out the opportunities and risks associated with interventions of different kinds and explains how local policymakers can ensure that the benefits of competition for service users and taxpayers are fully considered in decision making and are not unintentionally jeopardised. Our work with local authorities and their representative bodies has shown that many already understand most of these opportunities and risks; this report summarises lessons applicable to all.

Background

4. Every year, local authorities buy goods and services worth over £55bn in England alone. In focusing the projects outlined below we have looked at activity relating to more than 30% of local authorities' total spend.² When competition works well in those markets, users get good services, taxpayers get good value for money and local economies thrive. But it is not only the scale of potential impact that makes this work important. When government (at all levels) demonstrates that it abides by the same market rules that it imposes on others, markets work better and public confidence in them is enhanced.
5. The CMA has a statutory role to advise government on issues relating to competition. In 2015, the Government invited the CMA to examine more specifically how the actions of local authorities could support competition and challenge them where they did not. It asked the CMA to report in 2017 on any themes emerging from this work, and on how local authorities had responded to CMA recommendations and advice.³
6. This paper is the CMA's response to this challenge. It:
 - sets out some of the key considerations associated with how government – including local authorities – interacts with competition;
 - provides an update on CMA work with local authorities;

² Based on outturn data of local authority revenue expenditure and financing for the financial year April 2016 to March 2017

³ HM Treasury, '[A better deal: boosting competition to bring down bills for families and firms](#)' (November 2015) and Department for Business, Innovation and Skills paper, '[Competition Regime](#)' (December 2015)

- highlights the key competition risks and opportunities we have identified during this work;
- provides advice to local authorities on how such risks can be managed; and
- confirms our ongoing interest in considering significant issues relating to local authorities' interactions with markets.

7. This paper does not touch on the CMA's work with the Consumer Protection Partnership, where we work with Trading Standards and other consumer enforcement and advisory agencies to safeguard the rights of consumers across the UK. This work helps strengthen competition pressures by ensuring that consumers can make informed choices and are not misled or tied into illegal contracts.⁴

8. In order to gain insight into the competition challenges, we talked to local authorities and businesses, building our knowledge of where competition was working and where more might be done to assist local authorities in understanding the potential for competition to help them get better market outcomes. We have worked closely with the LGA and engaged with the Convention of Scottish Local Authorities (COSLA), business groups, government departments and a range of local government think tanks. We are grateful to everyone who has helped us in the individual projects and the development of this report.

9. We have focussed our work on issues and markets where we consider there to be a genuine competition issue, where there is greatest risk for consumers, (which in the case of public markets we take to include local services users and taxpayers), and where the CMA can bring added value by advising on how those markets can work better.

10. Local authorities interact with markets in four main ways:

- *As a buyer of goods and services*, local authorities can benefit from reduced prices, higher quality and innovation that are often the result of healthy

⁴ More information can be found on the [consumer protection pages](#) of the CMA's website

competition. Local authorities can help drive healthy competition through effective design and execution of public procurements.

- As a *shaper of markets*, local authorities can seek to introduce competitive pressure between buyers and sellers in order to deliver wider policy objectives over the longer-term.
- Local authorities have an historic role as a *supplier of goods and services*, particularly those that would otherwise not be provided at the desired level. Many authorities are increasingly seeking to benefit from the commercial value of public sector assets or expertise.
- As a *regulator of markets*, local authorities help make markets function effectively for the benefit of local consumers.

11. We have sought to cover issues relating to all these local authority roles, drawing on information and evidence provided to us, and from our own research.

CMA projects covered a broad range of local authority market interactions:

Local authorities as buyer	Local authorities as market shaper	Local authorities as supplier	Local authorities as regulator
<p>Short report on municipal waste procurement</p> <p>Care Homes market study – procurement</p> <p>National and regional workshops to raise LA awareness of bid-rigging</p> <p>LA involvement in developing the CMA Screening for Cartels tool</p>	<p>Care Homes market study – market shaping</p> <p>Advice to UK, Scottish and Welsh Government on legislation, and competition guidance for LTAs considering bus partnerships</p>	<p>Strengthened competition content in LGA guidance ‘Enterprising Councils’</p> <p>DCLG/LGA promotion of best practice on leaseholder information, building on CMA market study</p>	<p>Advice to individual authorities on taxi and private hire vehicle regulation</p> <p>Enforcement action against the Showmen’s Guild</p> <p>Considering complaints against LA high strength alcohol schemes</p>

Local authorities as buyer

12. Competition is a process of rivalry as firms seek to win customers' business. It creates incentives for firms to meet the existing and future needs of customers as effectively and efficiently as possible, by cutting prices, increasing supply, improving quality or variety, or introducing new and better products.
13. Securing these benefits of competition isn't simply a matter of getting a greater number of bidders or forcing prices down to the lowest possible level. Procurement processes take account of all an authority's objectives, and should offer smaller firms and new entrants the same opportunities as in-house, existing and larger providers. Local authority procurers may be able maintain a competitive market structure through deliberately sourcing their requirements from a range of suppliers, by providing incentives to suppliers to invest and innovate, and by helping firms to overcome barriers to entry.
14. The CMA has heard concerns that some local authorities' procurement processes can restrict or distort competition. We recognise that local authorities are seeking to meet numerous objectives, including compliance with procurement law. But it is important that public sector procurers understand the impact of the way they design procurement processes on competition. For example, unduly complex and burdensome processes may restrict the participation of smaller providers and some requirements might discriminate against particular types of firms or may favour incumbent suppliers, whether in-house or contractors. In the short-term, contracts may not be awarded to the most efficient supplier, potentially leading to higher prices and worse outcomes. In the longer term, incentives for suppliers to compete or innovate will be weaker. Eventually, more efficient suppliers may leave the market.⁵
15. Box 1 illustrates risks to effective competition identified by analysis of waste collection contracts.

⁵ OFT report, [Assessing the impact of public sector procurement on competition](#) (September, 2004) identified the basic ways in which public procurement can affect competition

Municipal waste procurement

The issue

In 2006 the Office of Fair Trading (OFT)⁶ worked with the Office for Government Commerce and the Department for Environment, Food and Rural Affairs to examine the effects of public procurement on competition and capacity in the municipal waste sector. The report included recommendations in relation to local authority procurement of waste collection and disposal services.⁷

In 2016, the CMA received a complaint alleging that some local authority procurement practices gave rise to an unfair advantage for local authority trading companies and failed to secure the benefits of competition.

What we did

The CMA analysed local authority spending on municipal waste collection (we did not consider issues relating to commercial collection, waste treatment or disposal). We looked for any relationships between metrics such as local authority spending, contract design and market concentration whilst accounting for the differences in local authority size and characteristics.

What we found

Our analysis uncovered no evidence of a breach of the law.

The analysis concluded that competition can help procurement professionals get value for money for service users and taxpayers. The data showed that longer and broader contracts that can limit competition are associated with higher spending. Longer contracts also risk deterring other firms from bidding because the incumbent supplier has a more established position and detailed knowledge of costs. (The 2006 report found other ways that local authorities may inadvertently restrict the number of bidders, or create incumbency advantages include the specification of inputs rather than outputs, issues relating to planning permission, pre-qualification and selection criteria and access to facilities.⁸)

The CMA held a round table with officials from the Department for Food and Rural Affairs, the Department for Communities and Local Government, the Waste and Resources Action Programme (WRAP) and the Local Government Association to discuss these findings. We subsequently shared them with the Environmental Services Association, which represents private suppliers. The findings, including

⁶ The Office of Fair Trading (OFT) was one of the CMA's predecessor bodies, along with the Competition Commission (CC).

⁷ OFT Report, [More competition Less Waste](#) (May 2006)

⁸ OFT Report, [More competition Less Waste](#) (May 2006)

some messages for local authority procurers were published on the CMA's website⁹ and promoted via a blog on gov.uk.¹⁰

Message for decision makers

To make the most of the potential benefits of competition, local authorities should:

- Limit the length of contracts tendered out to no longer than is necessary; and
- Tender services separately wherever possible to take advantage of competition

Although we did not make any findings in relation to potential bid-rigging, the municipal waste collection market has some characteristics that could make it prone to bid-rigging. Local authorities should take precautions against bid-rigging; for example, ensuring that staff are aware of the risks, using the CMA Screening for Cartels tool (see box 3 below), reminding suppliers that collusion is a serious offence and asking for certificates of independent bids.

16. By virtue of their relative size and strategic importance, local authorities can often exercise buyer power in local markets. This can help ensure that suppliers compete vigorously for public contracts, and help them get a good deal for taxpayers and service users. But significant buyer power also risks damaging competition, particularly over the long term. For example, an overly strong focus on price in public tenders may discourage quality because bidders might not be able to recoup their investments.

17. Box 2 identifies some of the pressures facing local authorities in procuring in the context of care home places.

Procurement of care home places

The issue

The care homes sector is worth around £15.9 billion a year in the UK, with around 410,000 residents. We estimate that local authorities in England, Scotland and Wales spent around £6 billion on social care for older people in residential or

⁹ CMA Report, [Local authority waste contracts](#) (November 2017)

¹⁰ CMA blog, [Securing the potential benefits of local authority trading companies](#) (November 2017)

nursing settings. The need for care will increase with an ageing population, and the acuity of care will also tend to increase over time.

What we did

The CMA has completed a market study into the sector¹¹ which concluded that significant reforms were needed to enable the sector to survive at current capacity levels and also to grow to meet the expected substantial increase in care needs.

As part of the market study, the CMA looked at how local authorities¹² procure care home places for people with eligible care needs.

What we found

We found that local authorities procuring care home services face increasing financial pressures combined with increasing demand for care for older people. Local constraints include the availability and capacity of care home places in their areas. In managing these pressures, local authorities took different approaches to aspects of the procurement process, including:

- Use of both block contracts (where a number of placements are ‘pre-booked’ at an agreed rate) and spot purchasing. Whilst spot purchasing allows greater scope for ongoing competition, block contracts can be effective for authorities to secure required investment in care home capacity.
- Use of electronic platforms. Dynamic purchasing systems raised concerns of excessive focus on price competition, but these can be mitigated by design features such as detailed specifications, ranking bids on price and quality, involving experienced staff in the procurement process, minimum or maximum prices, and allowing for the use of top-up payments.
- Conducting cost of care exercises. These can foster ‘buy in’ from authorities and providers to negotiated prices (Scottish arrangements involved ongoing collaborative effort), and give local authorities a better understanding of the local market conditions and the sustainability of their procurement policies.
- Applying quality standards. Local authorities are looking at ways of better rewarding quality in the procurement process, e.g. through internal ranking systems. However, the ability for authorities to choose a home with quality above a minimum standard depends on local circumstances and may be limited by the quality of local places, and their availability.

¹¹ CMA case page, [Care homes market study](#)

¹² References to local authorities should be taken to include their equivalents in the devolved nations as relevant in the context, including Health and Social Care Trusts (HSC Trusts) in Northern Ireland and Integration Joint Boards in Scotland.

- Offering choice. By giving some people more choice, top up payments have the potential to promote competition, investment and innovation to the benefit of all residents. The associated risks can be mitigated by, for example, examining affordability, sustainability and available equity when determining whether to agree a top up, providing good information to help people understand their top up and ensuring that they are willing and able to meet the cost of the top up.

The demand for care home places, including for local authority-funded residents, is expected to increase in the future. This should be a signal to investors to develop new capacity. However, the evidence suggests that this has not been happening. As a major purchaser of care home places, local authorities are likely to have negotiating power to force prices down to levels that may not be permanently sustainable. Our financial analysis shows that across the UK, fee rates paid by local authorities are insufficient to cover care homes' full costs, in part as costs have increased and local authority fees have not increased at the same rate. The consequence is likely to be that local authority-focussed care homes will be unable to invest, modernise and update their services over time. Instead they will keep operating until a point is reached where major investment is required, at which time we would expect them to close and the buildings or land to be deployed for different uses.

Message for decision makers

We found that effective local authority procurement strategies:

- recognise local market circumstances including the balance between supply and demand for care home capacity, local labour market constraints and the quality of local care homes;
- are responsive to changing market conditions;
- encourage competition between care homes based on delivering good outcomes for residents (both self-funded and LA funded) and their friends and families), and value for money for the LA and taxpayer;
- provide for effective communication between any LAs and NHS bodies who are purchasing care home capacity in the same local areas; and
- support the sustainable provision of capacity by encouraging the provision of flexible and diverse care home capacity and providing for effective engagement with providers.

Further information about our Care Homes report, and local authorities' role as a market shaper, can be found in Box 4 and on the CMA's case page.¹³

¹³ CMA case page, [Care homes market study](#)

Spotting and stopping bid-rigging

18. In addition to promoting competition through procurement, tendering processes should be designed to minimise the risk of bid-rigging among potential competitors. Bid-rigging is a form of cartel that may arise when contracts are awarded by competitive tender: members of the cartel secretly agree with each other which bidder should win a particular contract and at what price.

19. Bid-rigging can occur in almost any industry and can involve goods or services at the manufacturing, distribution or retail level. Bid-rigging activity in a supply chain can raise prices by more than 30%. And because the bid-rigging is unseen, the procurer is misled into thinking that a genuine competition has taken place, and that this artificially high price is actually the competitive price. Not only does this drive up prices for the tender in question, but it can raise the benchmark for future procurement exercises.

20. Box 3 illustrates how we have provided awareness and training materials for procurers and used data science and know-how drawn from international experience to develop a new software tool to help procurers identify signs of bid-rigging among their suppliers.

Identifying bid-rigging

The issue

In addition to updating and promoting CMA materials and online resources designed to raise awareness and understanding of the risks of collusion between suppliers, the CMA has developed a tool that can help public sector procurers screen tender data for signs of possible bid-rigging by a cartel.

What we did

We reviewed international literature and worked with data scientists, cartel enforcement and intelligence specialists and procuring authorities to identify those indicators of bid-rigging that it would be possible and practical to test for.

Our eight English local authority partners supplied essential data on which to test and refine the tool, provided vital practical expertise on the working of procurement processes, and shared previous experience in tracing cartel activity. At a later stage, the Central Procurement Directorate of the Northern Ireland Department of Finance tested the tool on data from Northern Ireland central departments. The LGA's National Advisory Group on Procurement and the Advanced Commercial Working Group also provided valuable input.

A first version of the Screening for Cartels tool was published on the GitHub in July 2017, a second version including refined algorithms was published in October. So far, 24 local authorities, 9 NHS trusts and emergency services, 12 Whitehall departments and 68 other public and private sector organisations have requested access to the tool.

Information about how to access and use the tool is available on the CMA website.¹⁴

Cornwall Council has described its experience of the tool:

“We heard about the tool at a CMA workshop on the dangers of bid-rigging. We were keen to get involved and saw the tool as an easy to use, practical way of giving us additional assurance.

We were faced with some firewall issues [but] we recognised the tool's value and pushed [our IT Department] to come up with a solution. We have now integrated the tool into our systems.

Our next step is to determine how we best exploit it. We need to agree what particular triggers should prompt us to use it.¹⁵”

We are encouraging users to share their experiences of using the tool, including through a dedicated forum on the Government Commercial Function pages on the Knowledge Hub.¹⁶

Based on user feedback, the CMA has refined some of the algorithms and thresholds. The latest version has been issued with a statement of digital quality assurance from the Government Digital Service (GDS) to help address IT security concerns expressed by some authorities.

Based on our work so far, and shaped by our engagement, the CMA organised workshops and seminars across the UK on how to spot bid-rigging which were attended by over 100 local authorities during 2016 and 2017. The sessions received very positive feedback.

¹⁴ www.gov.uk/government/publications/screening-for-cartels-tool-for-procurers

¹⁵ Commercial Services, Cornwall Council

¹⁶ The Knowledge Hub is a collaborative online site for the public sector available to users with a gov.uk email address www.khub.net

Message for decision makers

- Use the materials available from the CMA to ensure relevant staff are aware of the risks of bid-rigging¹⁷
- Use the CMA's Screening for Cartels tool to identify possible bid-rigging, and share any significant leads with the CMA cartels hotline¹⁸

Local authorities as market shaper

21. Local authorities may have opportunities or duties to 'manage competition' amongst suppliers to shape markets in order to achieve long-term efficiency by encouraging innovation and investment. The aim of market shaping is to bring to bear all the tools at authorities' disposal to achieve public policy objectives in markets. In the context of care homes, for example, a local authority acts as a purchaser of care, but its overarching responsibility is to ensure there will be a diverse, sustainable and quality care and support market operating in its area in the future.

22. Box 4 describes how English and Northern Irish local authorities can best shape care home markets and how steps are already being taken in Wales and Scotland to plan for future care needs.

Shaping the market for care homes

The issue

In England, local authorities have 'market shaping' duties, which mean that they must 'encourage and facilitate the whole market' in their area for care, support and related services. In doing so, they must ensure that they are 'aware of current and likely future demand for such services' and 'have regard to the need to ensure that sufficient services are available for meeting the needs for care'.

Local authorities have a legal duty to meet people's eligible care needs subject to their financial circumstances. The CMA was concerned that the market will not deliver the future capacity required, potentially resulting in people not getting the care they need, or care being provided in less efficient and more costly ways in the future. We consider these risks to be particularly acute in England and Northern

¹⁷ A 60 Second Summary and e-learning module on how to spot bid-rigging are available www.gov.uk/government/publications/bid-rigging-advice-for-public-sector-procurers

¹⁸ CMA Cartels Hotline 0800 085 1664 or 0203 738 6888 or email cartelshotline@cma.gsi.gov.uk

Ireland. In Wales and Scotland measures have recently been put in place to address the need for planning of care provision and provide improved confidence to potential investors in respect of future returns.

In addition to looking at how local authorities procure care home services (see box 2 above), the CMA care homes market study¹⁹ also looked at how future care needs are expected to evolve and the current arrangements for forecasting and planning for those changes.

What we did

The CMA reviewed available market position statements for 20 local authorities in England (or their equivalent public documents produced in Wales, Scotland and Northern Ireland) and gathered information and data from stakeholders.

What we found

It was clear that local authorities took a variety of approaches to their market shaping role, and that the sophistication of future planning was variable. We observed things that were done well, including where local authorities have sought to address shortfalls in provision by providing land, agreeing block contracts, and building and leasing homes. We also identified concerns about some authorities' approach to planning and funding capacity in the sector, including:

- Insufficient published information on likely future needs for care homes which hampers potential investment
- A lack of necessary resources or capabilities to forecast future care needs effectively
- Insufficient commissioning activity by local authorities to help ensure plans are met
- Insufficient confidence among potential investors to encourage investment in capacity to serve primarily local authority funded residents, largely due to risks associated with future funding.

The CMA has recommended that the governments in England and Northern Ireland set up a new, independent, function for planning to provide confidence that capacity will be in place to meet future needs. This function could review and report on planning by local authorities and provide guidance.

For England, the CMA has also recommended a process is established to provide independent advice to government to provide evidence on the expected cost and need for different forms of care.

Message for decision makers

¹⁹ CMA case page, [Care homes market study](#)

Local authorities are well placed to plan for how care needs should be met, reflecting local needs and priorities. In doing so, local authorities should:

- share and learn from good practice from other authorities,
- make good use of the information, advice and guidance provided by the independent body the CMA has recommended,
- plan ahead so that the industry can invest in good time to meet changing care needs, and
- ensure market shaping documents provide sufficient information and clear plans to give private investors the intelligence and confidence the need.

Further information about our Care Homes report, and local authorities' role procuring care home places, can be found in Box 2 and on the CMA's case page.²⁰

23. Box 5 describes how we have advised local transport authorities to maintain some of the advantages of on-road competition – where operators run competing services on routes that at least partially overlap – when establishing partnership or franchising schemes in local bus markets.

Shaping local bus markets

The issue

The recent Bus Services Act gives elected mayors the power to introduce franchising and gives local transport authorities (LTAs) greater options to work with bus operators to set a vision for bus services in their area and agree a plan to help achieve this vision. 'Enhanced partnership' arrangements can set standards for local bus services, including vehicle specifications, branding, ticketing and service frequencies.

Competition in local bus markets can deliver benefits to passengers, as operators are given the incentive to offer low fares and high quality, innovative services. But there are also circumstances where passengers can also benefit from effective partnerships between bus operators and LTAs. Such beneficial forms of co-operation can include better integrated networks, multi-operator ticketing schemes and improved information management. The CMA has welcomed the devolved nature of the new Act, recognising that issues with local bus networks are best addressed on a local basis, but in our recommendations to Government we made

²⁰ CMA case page, [Care homes market study](#)

it clear that decisions by local authorities on these issues should include a thorough assessment of the impact of proposed schemes on competition.

What we did

The CMA worked with the Department of Transport (DfT) on the Bill and subsequent guidance, including making formal recommendations which the Department accepted²¹ and publishing a blog for gov.uk.²² The CMA has also provided advice to the Welsh and Scottish Governments on local bus policy.

The CMA also responded to reports that LTAs and operators were deterred from introducing partnership arrangements for fear that the CMA might consider them to breach competition law and enforce against them. In 2015, we worked with the South Yorkshire Passenger Transport Executive on its planned local bus partnership arrangements. Based on our advice to South Yorkshire, we wrote an open letter to LTAs setting out how best to strike a balance between partnership working and competition.²³ We remain willing to work with LTAs that are considering significant partnership plans and/or potential franchising arrangement.

Message to decision makers

- On-road competition – where operators run competing services on routes that at least partially overlap – should only be abandoned in favour of competition for the market in circumstances where it is clear it is the only way to secure better outcomes for passengers.
- Local bus service partnership arrangements will capture the benefits of both competition and partnership if they conduct rigorous competition assessments and consult opening, including with the CMA.
- Once an LTA has chosen to franchise, it should keep in mind the benefits of competition it risks forgoing and seek to mitigate any harm arising.

Local authorities as supplier

24. There can be situations where direct provision of goods and services by government, including local authorities, is in the best interests of consumers. This might be because without direct supply, the market would not provide a sufficient quantity at an appropriate price (for example social housing), because the authority owns assets which can be used to provide services efficiently to consumers (for example leisure

²¹ CMA [Recommendations to Government on the Bus Services Bill](#) (June 2016)

²² CMA blog, [Bus Services Bill: retaining the benefits of competition](#) (July 2016)

²³ CMA [open letter to LTAs](#) (March 2016)

centres), or where an additional directly controlled supplier can increase the intensity of competition in a market.

25. An increasing number of councils are setting up arms-length local authority trading companies. Although wholly owned by a local authority, they operate as separate entities to the council so can participate in a wider market and can be run to make a profit. Trading companies provide a wide range of services, including local care, facilities management, waste services and leisure centres.
26. Where it is the direct provider, a local authority needs to be aware of the risks of crowding out private sector activity. Some business groups argue, for example, that government-funded business support services undermine demand for potentially more innovative and cost effective private sector provision. Similarly, a local authority should ensure that public bodies that compete alongside private firms do not distort the market in ways that might harm the interests of service users and taxpayers. For example, if a local authority-owned leisure centre prevented private companies from using the facilities to offer competing classes, local users are denied a real choice and the local authority operator faces no incentive to invest or innovate in ways that appeal to local users.
27. Local authorities also need to be aware that when operating in a market as a supplier, they are likely to be subject to the same competition law as private sector competitors.
28. Box 6 describes how we have advised local authorities to ensure that they capture the benefits of competition when using trading companies to provide goods or services.

Local authority trading companies

The issue

Business groups complained to the CMA that local authority trading companies were harming competition. Their members reported being unable to compete with council services, or that they were competing at a disadvantage, often because of concerns about local authority procurement practices (because contracts

appeared to be designed to be awarded to a local authority's own business), potential cases of state aid (for example where a trading company benefits from sharing costs or from association with a well-known local authority brand) and the risk of the private sector being crowded out.

What we did

We asked business groups to provide evidence of harm – to businesses and the consumer – resulting from the operation of local authority trading companies.

We met the LGA's Advanced Commercial Working Group to discuss these concerns, and to understand the approach taken by local authorities to setting up trading companies.

What we found

We did not see evidence of anti-competitive practices. However, the perception amongst businesses that trading companies can chill competition for local authority contracts was entrenched. This can damage business confidence in the integrity of contracting processes and deter them from participating on markets.

The existence of a local authority trading company may strengthen competitive pressure in the market. However, simply setting up a trading company will not necessarily generate the benefits of competition. These benefits are only secured if suppliers, including any trading company, have the ability and the incentives to compete vigorously – either against each other or in the face of possible new entry.

Where trading companies compete for contracts let by their parent authority, in order to convince other potential bidders that the process will be fair, the authority should ensure, and demonstrate, that the procurement process does not favour the trading company. It should implement strict governance standards to guard against regulatory capture and conflict of interest, and be aware of the risks of misallocation of cost and mispricing of risk.

Where trading companies act as a gateway to other services, the company must not give private sector competitors worse access to facilities than its own downstream operation, such as refusing to grant access or offering different terms without good reason. Such behaviour could result in worse services for local users and might constitute illegal abuse of a dominant position.

We found that use of the Teckal exemption²⁴ risks local authorities missing out on the benefits of competition, as trading companies cushioned by the protection of

²⁴ In simple terms, the Teckal exemption covers circumstances where an authority or authorities set up arrangements, including wholly owned companies, to supply services back to those authorities, in the same manner as an in-house arrangement. In these cases, the EU procurement rules do not apply to those arrangements. [Enterprising Councils](#), LGA, July 2017

the exemption are unlikely to face any significant incentives to improve or innovate.

In order to highlight these issues, we contributed to the LGA's *Enterprising Councils* guidance to help local authorities think through the possible impact of and risks to competition associated with setting up and running a trading company.²⁵

Message for decision makers

- It is important that public bodies neither suffer disadvantages nor exploit any unfair advantages over the private sector.
- If a local authority trading company is to help deliver the benefits of competition to the local authority and local community, it must to be exposed to actual competition as well as the threat of potential new entry.
- Even a perception that a local authority might discriminate in favour of its trading company may discourage private sector firms from bidding for contracts.
- Trading companies are likely to be considered economic actors subject to the same competition rules as private sector competitors. Non-compliance with competition law can have serious consequences for a council and for trading companies, including adverse reputational impact, possible financial penalties and claims for damages.

Sharing best practice to drive up standards

29. Where competition exists, it might be expected to drive up service standards. In markets, or parts of markets, which are not subject to competition, the sharing of best practice can help motivate authorities to seek higher public standards.

30. Box 7 describes how setting up mechanisms to share best practice between authorities can help address inconsistency in service standards for the benefits of local service users.

Leaseholder information best practice

The issue

²⁵ LGA guidance document [Enterprising Councils: supporting councils' income generation activity](#) (July 2017)

The CMA's Residential Property Management market study²⁶ found that while the market worked well for many leaseholders, one of the areas where it worked less well was in information provided by local authorities to leaseholders in social housing. This information can relate to consultation on major works and changes to administrative processes.

What we found

Although in many cases, local authorities and housing associations had better processes for transparency, consultation and redress than in the private sector, the CMA received over 160 complaints about information and service provided by social housing providers.

It appeared that poor outcomes were related to particular local authorities. As a result, we recommended that local authorities should develop mechanisms to share best practice in working with leaseholders. By sharing information on what has worked well, other authorities may be able to raise their standard of service and provide improved levels of information to leaseholders.

What we did

Following our recommendations, the Department for Communities and Local Government (DCLG) worked with industry experts to produce 'Providing information for council leaseholders: a good practice guide for local authorities'. DCLG sent details of this guide to local authority Chief Executives via their Permanent Secretary's monthly newsletter and the LGA has promoted it on the Strategic Housing Group page of the Knowledge Hub²⁷.

Messages for decision makers

Local authorities are encouraged to:

- use the checklist published as part of the guide and assess the information and services they provide to leaseholders against the 'good practice' indicators.
- review and, where appropriate, adapt the good practice exemplars.

Local authorities as regulators

31. Local authorities have wide responsibilities for designing and delivering local regulation. Regulation is important to correct market failures, including to meet public

²⁶ CMA Market Study, [Residential property management services](#) (December 2014)

²⁷ www.khub.net

policy goals (for example, public safety through food hygiene). Other local regulation (for example, the local trading standards regime) is designed to support fair market competition. Local authorities face competing pressures to achieve their public policy goals without unduly harming competition that benefits consumers.

32. As policy makers concentrate on securing the desired public policy outcome, such as improved food hygiene, and assessing the direct costs of a regulatory intervention, such as business compliance and enforcement, potential distortions to competition can easily be overlooked, particularly as it usually takes some time for the consequences of restrictions on competition to become apparent. If regulatory interventions increase operating costs or raise barriers to entry, they can inadvertently protect businesses already operating in a market from innovative new business models, or can favour larger businesses which can spread the costs of regulatory compliance over a wider base. This means that regulatory interventions do not always act in consumers' and taxpayers' best interests, particularly over the longer term, so it is essential that local authorities carry out thorough impact assessments.

33. The CMA's Competition Impact Assessment guidelines²⁸ encourages public policy makers to ask four key questions:

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

34. Considering these questions will help local authorities achieve their public policy objectives, whilst ensuring suppliers and potential suppliers still have the incentive and ability to compete on features that consumers value.²⁹

²⁸ CMA guidance, [Competition impact assessment: guidelines for policymakers](#) (September 2015)

²⁹ More information on the interaction between government and markets can be found in the OFT Report, [Government in markets](#) (2009)

35. Box 8 describes how we have helped support authorities in regulating taxis and private hire vehicles in ways which ensure passenger safety whilst not unnecessarily harming their interests in terms of price and choice.

Regulation of taxis and private hire vehicles

The issue

Licensing plays a crucial role in ensuring the safety of passengers, but some taxi and private hire vehicle (PHV) licensing conditions would restrict or distort competition in ways that may result in higher prices and/or worse service for consumers without being necessary for consumer protection.

What we did

The CMA undertook a review of taxi and PHV licensing conditions in a sample of local authorities. We used the CMA's Competition Impact Assessment framework to review the likely nature of the proposed restrictions, and identify those proposals that would impose restrictions that went beyond what was necessary for consumer protection.

What we found

We found that some potentially concerning proposals were being considered across a handful of large licensing authorities. For example, some authorities proposed that booking confirmation details must be provided to the passenger at least five minutes before starting the journey. This would eliminate the advantage available to those companies using technology that would allow them to fulfil a booking more quickly, something that passengers were likely to value. Other proposals included banning drivers from working for more than one operator, which would make it difficult for firms to enter the market or expand by recruiting existing drivers on a part-time basis, which could reinforce the market position of the biggest firms.

We responded to some consultation processes, including those run by Transport for London, and by Liverpool and Sheffield councils. All responded positively, and most of the proposals we were concerned about have been abandoned.

In addition, the CMA published a guide³⁰ to help local authorities understand the impact some licensing conditions can have on consumers to help them reach the right balance between ensuring passenger safety and avoiding consumers having to face higher prices or lower service quality.

The CMA has provided advice to the Welsh Government and Scottish Government Advisory Panel on taxi and PHV licensing and is part of the Department of

³⁰ CMA guidance, [Regulation of taxis and private hire vehicles: understanding the impact on competition](#) (July 2017)

Transport's Taxi and Private Hire Working Group considering the adequacy and efficiency of existing legislation and guidance.

Message to decision makers

When reviewing a licensing regime, local authorities should:

- Consider the questions set out in the CMA's Competition Impact Assessment guidelines
- Ensure proposed measures are necessary to achieve your objectives, and work in the interests of consumers, rather than industry incumbents
- Where measures are likely to restrict competition and raise prices for consumers, consider whether alternative, less-restrictive measures could be employed to achieve your objectives.

36. Box 9 describes how we have enabled and encouraged authorities not to reinforce exclusive behaviour in supplier organisations.

Funfairs on local authority land

The issue

Virtually all travelling funfairs are operated by members of the Showmen's Guild of Great Britain. The CMA had concerns that the Guild's rules prevented Guild members from competing with each other for the right to attend and to organise fairs, thereby depriving local authorities and other landowners of choice about which showmen to have on their land. The CMA was also concerned about rules which appeared to stop members from starting new fairs within 2 miles of existing fairs, and made it difficult for members of the Guild and non-members to work together.

What we did

The CMA launched an investigation under Chapter I of the Competition Act 1998 and issued the Guild with a statement of objections in December 2016. The Guild then offered the CMA commitments. The CMA consulted on these commitments, and accepted them in October 2017.^[1]

What we found

The CMA was concerned that certain rules of the Guild are restrictive of competition both at existing Guild fairs and between Guild fairs and rival fairs. Such concerns relate to competition between members of the Guild and between members of the Guild and non-members. The rules work together to protect

^[1] CMA case page, [Showmen's Guild: suspected anti-competitive practices](#)

incumbent members of the Guild, and their fairs, from competition. In so doing they reduce the prospect of greater choice, further innovation (for example, new or improved rides) and an even more attractive service for fairgoers.

The CMA consulted on changes offered by the Guild to address the CMA's competition concerns. In November 2017, the CMA wrote to the LGA, COSLA, NILGA and the Welsh GLA explaining that it had accepted the Guild's commitments, and explaining how those changes will be of interest to local authorities.

Message for decision makers

From January 2018 changes should be made - subject to final acceptance by the Guild's membership – which, if implemented, will allow:

- Local authorities to replace an incumbent Guild fair organiser or amusement operator on grounds of the incumbent's poor performance,
- Members and non-members to compete for ground when a local authority decides to replace a poorly performing incumbent Guild fair organiser or amusement operator, and
- Local Authorities to have new Guild fairs within one mile of an existing fair.

A fuller explanation of the changes is available on the CMA case page.

37. Box 10 illustrates how we have helped local authorities establish schemes restricting the sale of products deemed harmful to public health or public order without infringing competition law.

High strength alcohol schemes

The issue

Some local authorities have introduced schemes that encourage retailers not to stock certain high-strength alcohol products as part of their strategy to address public policy concerns alcohol misuse. Whilst there is no barrier under competition law to prevent businesses working together, or together with local authorities, to address public policy concerns, some of the initiatives we were made aware of could carry competition law risks, particularly if they encouraged sharing of commercial information between independent businesses.

The CMA has considered complaints on these issues, but has not been provided with compelling evidence of a breach of the law.

What we did

The CMA worked with local councils and businesses to understand their concerns and to clarify potential competition law issues. To help local authorities and businesses ‘self-assess’ and ensure compliance with competition, the CMA supplemented specific guidance on local authority initiatives with an at-a-glance 60 second summary and a letter outlining what retailers need to look out for.³¹

Message for decision makers

- If considering such a scheme, local authorities should consult existing CMA guidance and consider the competition law implications of proposals at an early stage.
- Local authorities should be aware that competition law risks may be more likely to arise in certain circumstances (for example, a meeting of retailers convened by a local authority to discuss alcohol concerns could risk sharing of commercial information, including future pricing intentions), and should act accordingly.

Working with local authorities

38. Local authorities are diverse in their role, priorities and outlook, including in their approach to markets and to competition. The CMA’s objective has been to seek to ensure that competition that serves the interests of consumers is preserved where possible, or at least that where local authorities choose to restrict it in pursuit of other public policy aims, they take account of the potential risks to the functioning of competitive markets in deciding whether and how to act. We have found the local authority officers we have dealt with to be receptive to these arguments even where they, or elected members, have concluded that other considerations must outweigh the potential harm to competition of particular policy interventions, as was the case for some high strength alcohol schemes.

39. Whilst we have engaged successfully with some individual local authorities (notably on taxi and PHV licensing), we have generally sought to work at a sector level, for example with the Local Government Association, in order to maximise the reach of our advice and recommendations. We are very grateful to the LGA officers to have helped us with these projects.

³¹ CMA guidance, [Local authority initiatives: advice on competition law](#) (December 2014)

40. Our dedicated Devolved Nations team, including our expanding team in Edinburgh, and our new team of Regional Champions ensure that we are engaging across the UK. For example, the CMA has launched a market study into heat networks which will consider the district and communal heating, which is of particular relevance to those living in local authority residential developments.³²

41. We remain willing – subject to competing demands on our resources – to work with individual local authorities, their representatives, businesses who work with them and those who represent the interests of local consumers to advise on how local authorities' engagement with markets can help those markets work well for service users and taxpayers.

³² CMA case page, [Heat networks market study](#)