

DIVERSITY vs ECONOMIES OF SCALE

- 01** These are both worth having, but nobody can have both at the same time. Which they can have depends on what they want from their packaging.
- 02** When making the necessary packaging choice, authorities need to consider both
- ¥ its direct effect on what they get for their money
 - ¥ the indirect effect of spending the money on particular contractors or types of contractors; and whether this helps them to perform their statutory functions.

Direct outcomes

- 03** Where direct outcomes are the only consideration, authorities can secure great value for money from economies of scale.
- 04** There are of course limits to how far economies of scale can be pursued before they become false economies. Commentators disagree widely about where this point is but, below this point, buying similar works and services from a miscellany of contractors is, other things being equal, inherently inefficient, so is not best value.
- 05** Other things are of course often not equal. Packaging small is often the only way of obtaining the services of the best service providers. **Small businesses** for example are often
- ¥ the most amenable to change, and most able to apply new technology and adopt new approaches to the service
 - ¥ the only providers willing to accept small packages
 - ¥ the readiest to provide add-ons to bigger and more complex contracts
 - ¥ the most willing and able to work from local bases
- 06** **Voluntary and community organisations** have many of the same attractions and can also offer
- ¥ exceptional credibility with local users, and with local communities generally
 - ¥ convenient location
 - ¥ close knowledge of vulnerable service users of the types to be provided for, for example disabled people, drug addicts or ex-offenders
- 07** **Social enterprises** often have similar advantages and are in addition able to trade outside the constraints of charity and trust law .

The indirect outcomes

- 08** Buying locally was for many years widely seen as being enlightened self-interest. Even now, it is not contrary to UK law. This is because of the **wide reach of wellbeing powers**, which for many authorities cover the greater part of their functions, and include anything which authorities **think will** (not which **will**) promote or improve the economic, social or environmental wellbeing of the whole or any part of their areas (**46**; 2) (**55**; 20(1)) provided it is
- ¥ not specifically precluded by other legislation (**46**; 3) (**55**; 21(1))
 - ¥ in England & Wales, in accordance with authorities' own community strategies (**46**; 2(3))
- 09** Buying locally is however contrary to the Treaty of Rome. The treaty applies to all public sector contracts in the EU even if the directives do not apply at all. It precludes authorities from doing anything **which does** have (and not merely anything **which is intended** to have) the effect of discriminating against service providers in other member states (**5**; 6).
- 10** This outlaws policies of local purchasing, and fragmentation for the purpose of encouraging it.
- 11** The same applies, for the same reason, to
- ¥ specifying the use of local labour
 - ¥ specifying subcontracting for its own sake, and not for example for the purpose of getting specified work done by subcontractors with special expertise
 - ¥ making track records in subcontracting factors in tenderer selection, except where subcontracting helps to secure direct outcomes such as greater diversity or flexibility

- 12** Requiring the employment of long term unemployed is different. It is non-discriminatory for the purposes of the Treaty of Rome (**1166**) provided (**1163**) contracts either
- ¥ specify the organisation or register from which such unemployed people may be identified
 - or**
 - ¥ allow the employment of unemployed people from any state.
- 13** Authorities with wellbeing powers are as follows
- ¥ in **England & Wales** all councils except parish & community councils (**46**; 1).
 - ¥ in **Scotland** all councils, joint fire boards and joint police boards (**55**; 61(c)(iii)).

SOURCES

- 5** Treaty of Rome 1957
46 Local Government Act 2000
55 Local Government in Scotland Act 2003
1163 Commission vs the French Republic (Nord Pas de Calais) (C225/98)
1166 Gebroeders Beentjes BV v the State (Netherlands) (C-31/87)