

Joint Committee on Environment, Culture and the Gaeltacht

Presentation by the Competition and Consumer Protection Commission

in relation to the Cemetery Management Bill, 2013

17th November 2015

Introduction

Chairman, I am pleased to accept the invitation of your Committee to attend and present the views of the Competition and Consumer Protection Commission (the “Commission”) on the occasion of the Committee’s examination of the Cemetery Management Bill, 2013. I am accompanied today by my colleagues, Mr. John Shine, Director of Advocacy and Market Intelligence and Ms. Haiyan Wang, Head of Investigation, Competition Enforcement Division.

Background

At the outset, I would like to say a few words about the Competition and Consumer Protection Commission. The Commission was established on October 31st 2014, with the amalgamation of the Competition Authority and the National Consumer Agency. The mission of the Commission is to make markets work better for consumers and businesses and our vision is for open and competitive markets where consumers are protected and empowered and businesses actively compete. The Commission has a very broad mandate and is the statutory entity with responsibility for the enforcement of both competition law and consumer law in the State. In addition, we seek to promote the benefits of competition and consumer protection through our advocacy and public awareness activities. We also operate a consumer helpline and website which help consumers to be aware of, and understand, their rights and provide information on personal finance products and services. We also have specific responsibilities in relation to the safety of consumer products, alternative dispute resolution and the regulation of grocery sector business relationships. Our ultimate aim is to ensure that markets are

competitive and play a role in making Ireland a better place to do business and to be a consumer.

In my presentation, I will briefly set out our past involvement in this sector and our views on the question of regulation.

Commission investigation into alleged anti-competitive practices

Funeral-related services are, by their nature, purchases that consumers have to make in the most difficult and stressful of circumstances. In such situations, consumers may be particularly vulnerable and unsure about exactly what they need to do and may be dependent on a service provider, such as a funeral director or provider of cemetery services, to guide them through the process. As such, it is a sector in which transparency and compliance with competition and consumer protection law are of paramount importance.

From an enforcement perspective, the Commission has conducted a detailed investigation, over a number of years, into alleged anti-competitive practices by Glasnevin Trust. This was concluded to our satisfaction in March 2015 with the agreement of Glasnevin Trust to a number of remedial measures. Details of the case are available on our website (www.ccpc.ie) but I will briefly summarise the main aspects for the benefit of the Committee. The case arose from a complaint received in November 2011 where it was alleged that Glasnevin Trust, and its subsidiary Glasnevin Cemetery Monument Works Ltd (“GCMW”), were engaging in anti-competitive practices designed to put competing headstone providers at a competitive disadvantage. It was alleged that this amounted to an abuse of dominance by Glasnevin Trust contrary to section 5 of the Competition Act 2002. After a detailed preliminary assessment and a subsequent formal investigation, the Commission sought and secured a number of remedial measures from Glasnevin Trust. These measures, relating to the provision of burial plots, headstones and headstone foundations, were designed to mitigate the alleged anti-competitive practices, and ensure the protection of consumers and increased transparency. These measures included :

- Glasnevin Trust to make its prices more transparent to consumers, making it easier for consumers to find a price list for burial plots and foundation fees on Glasnevin Trust’s website and in Glasnevin Trust’s offices

- Given that many funeral directors often act on behalf of bereaved families, Glasnevin Trust to take measures to ensure that funeral directors inform consumers of the separate cost of the foundation fee
- Glasnevin Trust to treat competing headstone providers in an equal and non-discriminatory manner in terms of waiting times for permits and foundations, access to cemeteries and regulatory requirements
- Glasnevin Trust to allow competing headstone providers to advertise in Glasnevin Trust promotional brochures subject to the payment of the same fees as payable by GCMW for such advertising.

Based on these measures, the Commission was satisfied to conclude its investigation in early 2015 without any further action being required. The Commission also corresponded with the Irish Monumental Firms Association setting out our position on the issues that had been raised.

Being mindful of the potential vulnerability of consumers at a particularly stressful time, the Commission provides information to consumers in a dedicated area of our website “Planning a funeral” and has recently added additional material in relation to “succession planning”. In addition, the Commission operates a consumer helpline which deals with over 50,000 contacts per annum from consumers ranging from general enquiries to specific complaints alleging breaches of consumer law. On average, approx. 10 contacts are received per annum in relation to funeral related issues. Issues raised appear to be once-off issues and nothing we have received suggests that there are substantive issues relating to breaches of consumer law.

The necessity for regulation

We note that the purpose of the Bill is to establish a cemeteries regulator to provide for the licensing of cemetery authorities and to specify management stipulations for such authorities, to promote competition and to provide for related matters.

In relation to matters relating to competition law and consumer welfare, which are within the remit of the Commission, we have no information of any substantive issues which merit the creation of a new regulatory authority. That is not to say that issues causing detriment to consumers might not exist but rather that the Commission does not consider that a sufficiently strong case has been made to justify the particular proposals envisaged.

As a general principle, the Commission considers that regulation should only be adopted as a last resort as a response to very serious shortcomings in a sector, in circumstances where existing measures have proved incapable of addressing such issues. Regulation has the potential to impose restrictions on entry to a market that are harmful to competition; leading to cost increases, inefficiencies and lower service quality. Regulation itself has to be paid for, usually by a levy on business, and the costs may outweigh the benefits. Any proposal to introduce new regulatory structures should therefore be progressed only after careful consideration of the necessity for, and implications of, such an initiative.

Specific concerns in relation to the current proposals

The Commission understands that the key concerns informing the Bill relate to anti-competitive practices in the cemetery industry and in particular to Glasnevin Trust's engagement in ancillary commercial activities. In addition to questioning the necessity for a sectoral regulator in the area, the Commission has a number of additional concerns in relation to the proposals contained in the Bill including the duplication of statutory functions and the effectiveness and proportionality of the proposals.

Duplication

As already outlined, the Commission is the statutory authority with responsibility for the enforcement of both competition law and consumer law in the State. Should any party currently have concerns in relation to potential breaches of either competition or consumer law, these should be brought to the attention of the Commission which already has the power to investigate such matters and has done so in the past. The Bill envisages a role for the proposed regulator which would duplicate some of the statutory activities of the Commission. It should also be pointed out that parties have the right of private action through the Courts.

Effectiveness and Proportionality

The Bill defines Cemetery Authority as being “any company, committee or body (other than a local authority or a town or borough council or an ecclesiastical authority) that is engaged whether pursuant to statute or otherwise in the management, operation or occupation of a cemetery;”. The Commission understands that many of the cemeteries outside the Dublin region are either in local authority or ecclesiastical ownership and thus outside the remit of the

Bill. The Commission further understands that the impact of the Bill in the Dublin area would primarily impact on the Glasnevin Trust cemeteries.

Moreover the Bill also proposes to restrict the regulated entities with charitable status from engaging in ancillary commercial services at its cemeteries. Glasnevin Trust appears to be the only cemetery operation with charitable status in the Dublin area. It should be pointed out that engagement by charitable organisations in commercial activities is not in itself anti-competitive. It is also recognised that the operation of cemeteries likely involves their maintenance into perpetuity. As such it would not be unreasonable for a cemetery operator to engage in some form of ancillary commercial activity to fund the maintenance of cemetery grounds that no longer generate sufficient income from burial plots. Furthermore, the funding requirement would likely be higher for those cemeteries that are of a historic nature and that have a specialised maintenance requirement. As previously indicated, Glasnevin Trust has undertaken to treat competing headstone providers in an equal and non-discriminatory manner and the Commission would be happy to engage with other cemetery operators should similar issues arise elsewhere.

Conclusion

Regulation should not be an end in itself. In considering any proposals for additional regulation, any perceived failings in the sector should be clearly identified and it should be clearly demonstrated that such issues cannot be adequately addressed within the current legislative environment before contemplating additional regulation. Any such regulation will come at a cost which will ultimately be borne by the consumer. As I have already stated, any proposals for further regulation merit careful consideration and the conduct of a regulatory impact assessment. In relation to the cemetery sector, the Commission is of the view that the case for further regulation has not been sufficiently articulated and further examination would be required before proceeding any further.

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