Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí | Competition and Consumer Protection Commission

Mr Jackie Cahill TD

Chairman

Joint Oireachtas Committee on Agriculture, Food and the Marine

Leinster House

Dublin 2

D02 XR20

4 October 2021

Veterinary Practice (Amendment) Bill 2021

Dear Chairman,

The Competition and Consumer Protection Commission ('CCPC') welcomes the opportunity to provide observations on the Veterinary Practice (Amendment) Bill 2021 ('the Bill'). The CCPC is the statutory body responsible for promoting compliance with, and enforcing, competition and consumer protection law in Ireland. In addition, under Section 10 (1) of the Competition and Consumer Protection Act 2014, the CCPC has a statutory function to promote competition and to promote and protect the interests and welfare of consumers. The CCPC is opposed to the content of the Bill as they seek to impose a disproportionate restriction on competition in the market for the provision of veterinary services and may lead to negative outcomes for consumers, including in the agricultural sector.

Corporate ownership of veterinary practices

The CCPC understands that the Bill proposes to add three sections to the Veterinary Practice Act 1995 ('the Act') in order to make statutory provision to prohibit ownership of veterinary practices by persons, other than a veterinary practitioner.

The CCPC has had significant previous engagement with competition in the veterinary services market. In 2008, one of the CCPC's predecessor organisations, the Competition

Authority, published *Competition in the Veterinary Profession*, a study of the market for veterinary services in Ireland ('the Veterinarians study')[1]. The Veterinarians study found a number of unnecessary restrictions on competition between veterinarians. The Competition Authority also examined ways of ensuring an adequate supply of veterinary services in the future, noting that this was particularly important for the agricultural sector.

The Veterinarians study contained recommendations to ensure sufficient supply of veterinarians, especially in remote areas, to remove restrictions on advertising by vets, and to allow corporate bodies to supply veterinary services. The Veterinarians study concluded that providing for corporate ownership of veterinary practices would have many benefits for both vets and consumers by improving access to capital and non-veterinarian business skills. The Veterinarian's study suggested that such benefits could include: cost savings, the ability to provide locations and opening hours that are more convenient for many consumers of companion animal services, flexible working arrangements and checks and balances on the quality of each vet's services (put in place to maintain the corporate body's reputation).

In 2018, in response to a consultation on the impact of corporate ownership on the regulation of veterinary practice by the Veterinary Council of Ireland ('the VCI'), the CCPC noted that corporate ownership models have already been put in place in a small amount of practices in Ireland. As part of that consultation process the VCI received advice from Grant Thornton stating that there was a lack of legal clarity in the Act, and that it did not express a role for the VCI in relation to ownership of practices. In 2019, in a response to a consultation on the VCI's Strategy Paper 2019-2023, the CCPC again supported the position that corporate ownership should be considered by the VCI in its Strategic Plan.

The CCPC recognises that restrictions on competition arising through legislation or regulation may be justified by a range of other policy objectives. Such regulatory barriers should meet the tests set out in the 'better regulation' principles of necessity, effectiveness, proportionality, transparency, accountability and consistency. In the view of the CCPC, the Bill does not propose to restrict competition in a necessary or proportionate manner but

[1] https://www.ccpc.ie/business/research/market-studies/competition-veterinary-profession/

rather seeks to impose a restriction on entry into the market without any assessment of the conditions in that market.

The CCPC notes that some stakeholders have put forward the view that the practice of veterinary medicine could be adversely impacted by corporate bodies owning and providing veterinary services. These views were raised and considered as part of the Veterinarians study in relation to commercial concerns taking precedence over quality of animal care. The study found that tension between the quality of service to a client and the commercial interests of a veterinarian will exist whether a veterinary practice is owned by a corporation or a group of veterinarians in partnership. The Veterinarian's study concluded that there is no difference between the commercial interests of a practice owned by vets in partnership and a practice owned by an investor; both are interested in commercial return. However, restrictions on incorporation would significantly impede competitive rivalry between veterinary practices. Such restrictions can impact on consumers and veterinarians by constraining the development of new, innovative or more efficient practices, as well as limiting the growth of individual veterinary practices, by limiting access to equity capital.

The Veterinarians study suggested that the commercial operations of a veterinary practice could be clearly separated from the practice of diagnosis and treatment so that a veterinarian's professional obligation to provide the highest level of care to animals would not conflict with commercial considerations regarding the cost of care. The 2008 study also noted that veterinarians, irrespective of where they work, had to register with the VCI before they could practice in Ireland and would be subject to its oversight, discipline and sanction. In this way standards of consumer protection can be maintained as is common in other regulated markets.

Any statutory provision to prevent corporate ownership in this market has the potential to have a negative effect on the availability of services by prompting firms with such ownership to exit the market, leading to greater concentration and putting upward pressure on the prices paid by farmers and consumers. Such provision may also be subject to challenge, including on constitutional grounds.

Directive 2006/123/EC on services in the internal market

The CCPC also notes the provisions of Article 15 of Directive 2006/123/EC on services in the internal market ('the Services Directive')[2]. Article 15(2) of the Services Directive provides that:

Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

(a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;

(b) an obligation on a provider to take a specific legal form;

(c) requirements which relate to the shareholding of a company;

(d) requirements, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;

(e) a ban on having more than one establishment in the territory of the same State;

(f) requirements fixing a minimum number of employees;

(g) fixed minimum and/or maximum tariffs with which the provider must comply;

(h) an obligation on the provider to supply other specific services jointly with his service.

The CCPC notes that Article 15(3) of the Services Directive provides that any requirements on the provision of services which fall within Article 15(2) should be justified on the basis of non-discrimination, proportionality and necessity.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123

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In respect of requirements of the Services Directive the CCPC further notes the judgment of the Court of Justice of the European Union ('CJEU') in Case C-297/16 (*CMVRO*) in a preliminary ruling concerning national legislation in Romania which sought to impose a requirement that the share capital of establishments retailing veterinary medicinal products be held only by veterinary practitioners. The CJEU held that Article 15 of the Services Directive "is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which shares in establishments retailing veterinary medicinal products must be owned exclusively by one or more veterinary practitioners".

Conclusion

The CCPC is strongly opposed to the content of the Bill and suggests that consideration be given to identifying an alternative approach to ensuring a continued high standard of care for animals and the widespread provision of veterinary services while maintaining competition in the market.

The CCPC would welcome the opportunity to discuss these issues further with the members of the Committee.

Yours sincerely,

[redacted]

Patrick Kenny

Member of the Commission

Competition and Consumer Protection Commission

cc. Senator Tim Lombard, Vice Chairman

Ms Sarah O'Farrell, Clerk to the Committee