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London Cremation Company

Submission in response to CMA Provisional Decision

Published 13 August 2020

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**1. Introduction**

- 1.1. This submission is made by the London Cremation Company (“LCC”) in response to the CMA’s Provisional Decision (the “PD”).
- 1.2. The submissions set out below are in addition to the LCC submissions to the CMA to date, which remain relevant to the CMA’s assessment.

**2. The CMA’s Proposed Remedies**

- 2.1. The LCC welcomes the CMA’s decision to pursue sunlight remedies that seek to improve market functioning, as recommended by the CC3 Guidelines.<sup>1</sup> As will be familiar, the Guidelines require the selection of remedies that increase competition as the means by which perceived harm is to be addressed, favouring a dynamic approach in which competition drives price competition and choice. There was a serious risk that some earlier proposals would have undermined choice in particular, and that a static price cap would not have delivered dynamic competition.
- 2.2. The LCC also welcomes the transparency requirements proposed in the PD. In relation to these, it is important that the bereaved see all relevant information, in order to best protect their interests and to promote competition.
- 2.3. In particular, it is important that the cremation fee is always passed through as a separate disbursement on invoices to consumers []. This is the only way in which the bereaved will have reliable visibility into the costs of cremation, since the publication of prices by crematoria alone would not itself address the conflicting incentives FDs may face [].
- 2.4. There is no harm, and considerable benefit, in ensuring that *all* those arranging funerals *always* receive pricing information (e.g. prices of crematoria). This will avoid inevitable and fruitless debates over interpretation and would firmly close the door to sharp practices around the fee.
- 2.5. The CMA has shown considerable tact in noting that not all customers will want an up-front discussion of price,<sup>2</sup> but the issue here is a different one: simply ensuring visibility over a line item within FD pricing disclosures which the CMA has correctly identified as necessary. Since there will inevitably be discussion, as the PD notes,<sup>3</sup> it is not intrusive to require provision of specific information on the crematoria disbursements by the FD as part of this

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<sup>1</sup> E.g. CC3 paragraphs 330-2 (referring to the remedies that significantly increase competitive pressure, generating consumer benefits through competition by facilitating growth, driving down costs, and increasing consumer choice. The Guidelines further note that a remedy addressing a subset of features of the market is sufficient if it generates competition and thereby addresses the concerns.)

<sup>2</sup> Paragraph 9.46, PD.

<sup>3</sup> Paragraph 9.63(1) PD.

process. If the bereaved truly do not wish to engage with this, they can disregard the information. There is no reason to deny them access to the information.

- 2.6. Any transparency measures proposed in the PD will take time to take effect in the market. The CMA has noted the extraordinary circumstances caused by the Covid-19 pandemic.<sup>4</sup> The LCC considers that time needs to be given to allow the transparency regime to operate in a post-Covid scenario in order to allow the impact of the transparency regime to be properly assessed.
- 2.7. Even absent the pandemic, there is a strong case that time should be given to the sunlight remedies to assess their impact. They should be given time to work, as they present the prospect of improving competition in the sense favoured in CC3 paras 330-2. As a price cap does not present the prospect of improving dynamic competition, but instead addresses static price effects, it sits in tension with the dynamic aims of CC3 and with the adoption of sunlight remedies.
- 2.8. If the CMA does revisit the sector to consider further remedies in future, the LCC's submissions to the CMA to date would remain relevant to a future regulatory regime as would the performance of the new sunlight remedies.

### **3. Specific Comments on the CMA's Position on Cost-Based Price Regulation**

- 3.1. The LCC is disappointed to see that the CMA appears not to have properly considered or amended certain matters about which the LCC still has serious concerns. These serious concerns would remain if further remedies are pursued. In particular, cost calculations fail to take sufficient account of the variation in land values by location, the variation in other costs and asset values by location, and the fact that the cost of capital differs materially according to the type and size of business. We note that the CMA has provided a response to some of these points, for example simply stating that a small company premium is not appropriate.<sup>5</sup> However, a small company premium is clearly appropriate when dealing with small companies. This requires an assessment of the facts. It is important that the CMA actually does an investigation of the cost of capital for smaller companies. If it were to do so, it would find that it is factually incorrect to assert that the cost of capital for smaller companies is the same as for larger companies. It is unacceptable for the CMA to ignore facts when they are inconvenient to its theory.
- 3.2. The LCC strongly disagrees with the CMA's approach in this regard, and notes that this is an overly theoretical approach in this unusual segment of the economy. The LCC repeats that the proposed approach is likely to favour larger players, [] and encourage vertical integration by the largest players [].
- 3.3. In relation to the CMA's indications that it will consider price regulation at a later date in light of the Covid-19 crisis, the LCC highlights that if average cremation fees were to be reduced across the whole sector by approximately £200 per cremation below the current pricing level, this would remove approximately £100 million of revenue from the industry. Such a revenue reduction would have a negative impact on smaller crematoria providers who are the majority of the market, leaving them unable to fund investment or potentially facing insolvency. This would create conditions for increased consolidation into vertically integrated providers, reducing choice for consumers especially as geographically competing crematoria would be likely to consolidate. The CMA must be very mindful of this risk.

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<sup>4</sup> See, for example, paragraphs 20-22 PD

<sup>5</sup> e.g. Appendix R paragraph 75, arguing against a small company premium.

- 3.4. The assessment contained in the PD seeks to identify demand in local markets. Many of these markets show geographic differences, and some will be more competitive than others. They must be addressed using local remedies reflecting local supply and demand and competitive pressures, as opposed to the implementation of national remedies based upon averages. The PD shows clear differences according to locality, and the CMA has concluded that funeral directors and crematoria are mostly local businesses.<sup>6</sup> It does not make sense to seek to apply a single national remedy, such as a price cap based on average pricing, in these circumstances. This is particularly the case for London, where the cost profile for businesses is higher, yet where profitability has been considerably lower reflecting strong competition and the long life of well-maintained invested assets. The LCC repeats its concerns that the earlier proposals would result in a negative return even for efficient operators if applied to London without adjustment.
- 3.5. If the CMA revisits the sector and reconsiders the implementation of costs-based regulation, these matters must be revisited, taking relevant considerations into account.

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<sup>6</sup> Paragraph 4.36, PD