

## **COMPETITION AND MARKETS AUTHORITY FUNERALS MARKET INVESTIGATION**

### **Summary of hearing with Memoria Limited held on 15 October 2020**

#### ***Procedural issues***

1. Memoria said that it wanted to raise ‘an issue of fundamental procedural importance’ and referred to a letter it had sent to the Chairman of the Investigation. The CMA had said that the Group was considering the letter alongside the other representations it had received in response to the Provisional Decision Report (PDR) and draft remedies. Memoria said that by failing to respond to the specific points raised in that letter, Memoria found itself in a ‘very precarious situation in relation to this hearing and the Investigation as a whole’.
2. Memoria explained that ‘while the CMA appears to be, provisionally, convinced that price controls would be appropriate to remedy the deficiencies identified, the CMA is not proposing them but, instead, it may impose them after a further market investigation at some unspecified time in the future’.
3. Memoria said that this was unprecedented and overrode the statutory deadline. It submitted that the CMA’s proposed approach was contrary to the framework and spirit of the Enterprise Act 2002, as amended by the Enterprise and Regulatory Reform Act 2013, and exposed ‘the industry to continued uncertainty in relation to the timing and form of any price control remedy and the delay and expense of a further market investigation’.
4. Memoria said that the only reasons given in the PDR for not including a price regulation remedy related to the coronavirus (COVID-19) pandemic and the ‘supposed difficulty in obtaining data and the need to design and consult on effective and proportionate price control regulation’. Memoria was not convinced by these reasons, noting that the CMA ‘has very considerable time to propose and design price control remedies stretching, if necessary, into 2022’. Memoria said that the CMA’s statutory duty would not be discharged ‘if the Final Decision omits a full analysis of possible price control remedies [...]’.

### ***Initial remarks***

5. Memoria said it was concerned that the CMA had disregarded the evidence before it, and appeared determined ‘...to persevere with the same erroneous conclusions outlined in the Market Study’. Memoria said that the substance of its evidence had been ignored, and that the CMA had completely misunderstood the cremation sector in the UK. In Memoria’s view, this had led the CMA to propose remedies that ‘will undermine both existing competition and, crucially, the future private investment that this sector needs to meet the customer demand that exists’.

### ***The cremation sector in the UK***

6. Memoria said that the CMA had failed to recognise key aspects of the cremation sector in the UK. Memoria said that the CMA was mistaken in concluding that ‘customers do not compare crematoria as they are, in effect, local monopolies and that competition on the basis of quality is limited’. It stated that funeral directors explain to families the differences in offerings, quality and location between crematoria, and that they have a vested interest in customers’ choice of crematorium. This was because ‘funeral directors are mostly judged on the quality of the service, which is extremely dependent on the crematorium where it takes place’. Memoria’s experience was that ‘customers do care passionately about quality and are increasingly assertive when it comes to getting the best possible value’.
7. Memoria said it strongly disagreed with the CMA that ‘assessing quality differentials between crematoria is, largely, impossible because these are often not measurable’, noting that private operators have invested in developing and upgrading sites, as have some local authorities. Memoria further stated that ‘even if these differences were not quantifiable, this does not mean that they do not exist, as the CMA has concluded’, and stressed that ‘crematoria offerings are anything but homogeneous’.
8. Memoria said that crematoria providing a poor offering, service or facilities, routinely lose customers until they can match competitors’ quality levels, unless they are artificially protected by barriers to entry in built-up or green-belt areas. Memoria said that location and familiarity cannot be the only factors driving consumer choice.
9. The CMA’s proposed 30-minute cortege-speed drivetime as a catchment area for rivals was, according to Memoria, ‘far too narrow to capture the bulk of important competitive interactions in the cremation market’.

## ***Excessive profits***

10. Memoria submitted that the ‘PDR’s alleged provisional AEC of excessive profits is not primarily driven by excessive prices but rather by high volumes coupled with low costs and lack of investment’. It said that ‘the PDR makes no attempt to assess whether the high profits identified are, in fact, mainly driven by high prices’. In Memoria’s view, ‘the CMA’s profitability analysis relating to the alleged provisional AEC is fundamentally flawed’, and it disagreed with ‘the PDR’s proposition that, in making assumptions on the useful economic life of buildings,

*“it is important to take a consistent approach across crematoria operators”*.

11. Memoria commented further on the cost of capital, profitability and price increases across the market. Memoria said that the reliability of the overall profitability analysis was overstated, and noted its fundamental concern that, ‘without a reliable understanding of which sites are driving excessive profitability and why, the PDR has no way of identifying what would be a good remedy for that alleged provisional AEC or what the unintended consequences of any proposed remedy might be’.

## ***Price regulation***

12. Memoria said that ‘the CMA’s highly interventionist proposed remedy’, described as a ‘one-size-fits-all’ price cap, was ineffective, disproportionate and destructive, asserting that it would ‘restrict choice and [...] investment and limit the development of UK crematoria capacity’. Memoria considered that the CMA ‘currently risks imposing a remedy, which will send the cremation sector back to that vicious cycle of underinvestment, little choice, low prices but lower quality of the 1970s and 1990s’. Memoria concluded its comments on price regulation by saying that ‘there is no reason why families should not be able to choose a high-quality product offered in the market if it is right for them’.

## ***Deferral of price regulation***

13. Memoria said that the CMA’s intention to defer finalising and implementing a price control remedy to a future “*supplementary*” investigation was ‘illegitimate and unreasonable’. Memoria considered that its right to challenge the final decision was limited by this deferral and that, if it did not or could not challenge the final report’s analyses, it would be taken as an acceptance of those findings. Memoria further submitted that, by deferring the question of price regulation, the CMA would be artificially and unlawfully extending the

statutory deadline, the entire purpose of which was to provide legal certainty and avoid undue delays.