CMA
Competition & Markets Authority

The CMA market investigation - what next?

The Competition and Markets Authority (CMA) began its investigation into the funerals market in March 2019. At the time, it made it clear that it had some fairly serious concerns about potential issues that could be affecting competition and consumers who need to use the services of a funeral director.

By the end of May we will finally get to see what plans the CMA has for funeral firms. The NAFD has again engaged specialist consultant, Europe Economics, to consider what these plans could be - and to assesses the likelihood and potential impact of four potential options.

Possibility 1 – No further action

The CMA could decide that its concerns were unfounded, or that they have now been dealt with as an indirect consequence of its intervention to date. There has, after all, been a great deal of positive industry change since the CMA announced its investigation, such as the launch of the Funeral Service Consumer Review.

Would this be desirable?

No.

There are, undeniably, issues in some parts of the market that could harm consumers. The CMA's work to date has identified problems, such as lack of price and information transparency and consumer difficulties in switching between funeral directors.

If consumers are unable, or not willing, to search for the best funeral directors for their needs, there is a risk that some firms could charge unreasonably high prices and/or offer low quality, whilst facing no pressure to improve.

What is the likelihood of this outcome?

Our view is that this is unlikely. The CMA has committed serious resources to its investigation, so is likely to want to deliver outcomes that demonstrate good use of those resources.

Possibility 2 – Nudge consumers and impose transparency measures

The CMA has expressed concerns that many consumers don't compare the services of more than one funeral firm before making their final decision. It has also noted that limited pricing information is available online and it is not easy for a consumer to judge quality standards.

The CMA could, therefore, seek to influence consumer behaviour and impose measures to improve transparency of information about pricing, quality and service options. Interventions could include mandatory publishing of price information, enforced cooling-off periods and other mechanisms to enable switching, eg unbundling services such as body collection/storage.

Would this be desirable?

Provided the approach was carefully thought out, this could be a very positive option for funeral firms as it could be effective, without being overly intrusive.

Interventions to improve consumer engagement in the market are likely to improve how the market operates, allowing competition to function normally and result in improved outcomes for consumers.

If consumers have sufficient information and encouragement to compare funeral directors and are able to change funeral directors relatively easily, firms will be under greater pressure to win customers through lower prices, higher quality or greater choice.

Improved transparency would also help avoid situations where bereaved consumers make poor on-the-spot choices (eg accepting a funeral director's services before they've had time to really consider the costs).

What is the likelihood of this outcome?

The CMA's early comments suggest that there is a high likelihood of this, at least as part of a possible suite of interventions.

Possibility 3 – Sector-wide price regulation

The CMA specifically identified price regulation as a potential remedy in its Statement of Issues.

Price regulation seeks to directly change the outcomes in a market, rather than seeking to change how the market operates.

Prices can be regulated in a number of ways. For example, revenue or profit caps can be set, such that firms cannot earn above a certain revenue/profit level and must, therefore, adjust their prices accordingly. Alternatively, prices can be set with reference to underlying costs or some other benchmark (even other companies' prices).

Would this be desirable?

No. Any form of price regulation would bring significant regulatory costs. These could include the need for a sector regulator - possibly funded through a levy payable by all funeral firms, a requirement for firms to undertake record keeping and regulatory reporting, and a risk of enforcement action for non compliance.

Such caps would almost certainly create distortions in the market place, with certain services becoming relatively more attractive than previously, and vice versa. In such a complex market, the risk of unintended consequences is just too high.

What is the likelihood of this outcome?

Given the wide range of interventions available, Europe Economics and the NAFD do not feel confident predicting the likelihood of the CMA's action in this area.

Such pricing remedies are common in regulated markets, even in markets where the supplier base is fragmented, as it is in the funeral sector, but where the degree of competition has been judged insufficient to constrain prices adequately, for example the retail energy market and pay-day lending.

Certainly, any intervention on a market-wide scale would be expensive and require oversight. The administrative burden for the CMA would be an important consideration.

Possibility 4 – Price regulation for certain identifiable groups

If the CMA concludes that a particular group of businesses benefits from a position of market power and is consequently able to charge higher prices as a result, it is possible that price regulation could be applied to this group only.

Would this be desirable?

There is always a risk that regulatory intervention on a market's outcomes can have its own distortions, and the NAFD's strong view is that efforts first to improve the structure of the market (eg through consumer behaviour) should be explored first.

Depending on the design of the cap, businesses not subject to it could be adversely affected. For example, it is possible that the regulated group would respond to the cap by targeting particular services not subject to the cap, putting unintended pressure on other firms.

Such an approach could also risk limiting the scope for entry or expansion by other funeral directors. This is because prices could be artificially set too low, such that normal price signals do not work.

What is the likelihood of this outcome?

This depends heavily on whether the CMA finds evidence of market power/dominance. If the CMA goes with this option, we will want to understand how it has concluded that the relevant group of businesses has market power and is exploiting this.

This typically requires the creation of a sectoral regulator, eg Ofcom regulates telecoms operators and the Civil Aviation Authority regulates airport charges. In the absence of a regulator, the CMA may be reluctant to take on the responsibility for capping prices/profits in the sector for an indefinite number of years.

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