

Joint Oireachtas Committee on Agriculture, Food and the Marine Competition and Consumer Protection Commission (CCPC) Opening Statement by Brian McHugh

Introduction

I would like to thank the Committee for the opportunity to speak to you today, and to provide our views on the Veterinary Practice (Amendment) Bill 2021. I would like to introduce myself to the Committee: Brian McHugh, Member of the Competition and Consumer Protection Commission. I am joined by Patrick Kenny, Member of the CCPC.

The CCPC has a statutory function under the Competition and Consumer Protection Act 2014 to promote competition and to promote and protect the interests and welfare of consumers. In the pursuit of those functions, we enforce competition and consumer protection law. We also provide advice to the Government and other public bodies on issues relating to competition and consumer welfare.

Unintended consequences

The CCPC is concerned that the provisions contained in the Veterinary Practice (Amendment) Bill would be disproportionate and would, in the CCPC's view, lead to a restriction of competition in the market for veterinary services with negative consequences for consumers, including farmers and the wider agricultural sector. Any perceived benefits of the proposed legislation are, in our view, unquantified and unclear. The CCPC is concerned also about potential unintended consequences of the proposed legislation should it be enacted.

Directive 2006/123/EC, commonly referred to as the 'Services Directive', is intended to provide a level playing field and eliminate barriers to the provision of services by businesses and professionals across the Member States of the European Union. The Services Directive requires that any legal restrictions on the exercise of a service are permissible only where they comply with the principles of non-discrimination, necessity and proportionality. Any restrictions on the legal form that veterinary practices take should be justified on a clear evidential basis of protecting the public from detriment, including harm to the animals under the care of veterinary practitioners. The CCPC is of the view that there is a real risk that an outright ban on corporate ownership could be successfully challenged as being disproportionate. The proposed legislation could be at odds with efforts to ensure that Ireland remains in compliance with EU law and continues to be a welcoming location for new businesses and investment by service providers.

The CCPC believes that the Committee should consider the adverse implications of the legislation on existing corporate owned practices in the State as well, as their employees

and customers. As the Members of the Committee are aware, the Constitution extends certain rights, including property rights, which may be affected by the passage of the Bill into law. The role of interpreting the Constitution falls to the Courts. As such, I will focus our comments in the remainder of this statement to the CCPC's views on the impact of the Bill on competition and the disproportionality of introducing a ban on corporate ownership. It is the CCPC's view that enhanced regulation could instead be employed to ensure that veterinary practices continue to provide a high standard of care irrespective of ownership structure.

Competition and the Veterinary Practice (Amendment) Bill 2021

Competition policy in its broadest sense involves the enforcement of competition law, including rules against anti-competitive practices, merger rules and, in addition, public policy measures which enable and support competition in markets. It may be of assistance to the Committee if I briefly discuss the importance of the public policy aspects of competition policy to the functioning of the economy. These aspects of the CCPC's remit focus on the broader environment of legislation, regulation and administrative practices.

Public policy can give rise to restrictions on competition in a number of ways. The CCPC recognises that there can be legitimate public policy objectives which, when balanced against those of competition, can lead to less competition in a market but which promote the public good in a broader sense. For example, the high level of qualifications necessary to practice medicine and veterinary medicine are barriers to entry, but the vital importance of protecting human and animal health justify those requirements.

Some restrictions, however, are less open to objective justification. The CCPC and its predecessor agency, the Competition Authority, have engaged with Government and other stakeholders in order to reduce such restrictions over the past number of decades through our advocacy activity and in particular through our market studies. Examples include our recommendations and advocacy activity to open up the market for legal services to greater competition and to reduce restrictions on the availability of GP services in Ireland.

The Committee may be aware that the Competition Authority published a study of the veterinarian market in 2008. That study, found a number of unnecessary restrictions on competition between veterinarians. It made a number of recommendations which were intended to address those restrictions, including removing restrictions on advertising by vets. The Competition Authority also examined ways of ensuring an adequate supply of veterinary services in the future, which is of particular importance for the agricultural

sector. We note the increased number of vets in practice in Ireland in the period since the publication of the study.

The CCPC understands that the intent of the Bill is to prohibit corporate ownership of veterinary practices by non vets. However, the CCPC believes that a variety of types of veterinary practices, including incorporated practices, should have a role to play in this sector. This was a specific recommendation in the Competition Authority's study as it found that the benefits of corporate ownership included improved access to capital for investment and the greater application of non-vet business skills. There are further potential benefits including: cost savings, the ability to provide locations and opening hours that are more convenient for many consumers and flexible working arrangements.

Irish Veterinary Sector

The current Irish veterinary sector is similar to many other European countries, in that there are a variety of types of ownership of practices. Veterinarians may work as sole traders, in partnerships, in incorporated practices and as employees. Survey results published by the Federation of Veterinarians in Europe in 2018, indicate that the Irish veterinary sector is not unusual in having a range of ownership models. Small practices predominate in Europe, with almost half of veterinarians being sole traders. In contrast, Ireland is home to a higher than average number of medium sized and larger practices with around 40% of practices being incorporated in some form. It would appear that irrespective of practice type, vets continue to deliver a variety of vital services across European countries.

Enhanced obligations on Veterinary Practices

The CCPC's view is that the Veterinary Practice Act 2005, could instead be amended to provide a legal basis on which the Veterinary Council of Ireland can regulate the operation of incorporated practices. As the Members of the Committee are aware, veterinary practitioners are obliged by provisions in the Veterinary Practice Act, as well as the Veterinary Council of Ireland's Code of Conduct, as to how they perform their functions in respect of their clients and animals under their care. As set out in the Code of Conduct, the veterinarian's duty to their clients includes the provision of twenty-four-hour emergency cover for the care of animals that, during normal working hours, could be considered as being under the care of the veterinary practice.

We understand that the intention of the Bill is in part to ensure that the availability of critical veterinary services, such as the provision of twenty-four-hour care, is not reduced due to such services being incompatible with the priorities of management in a corporate owned practice. However, such a ban would appear to be unique in Europe and has not been applied in other similar professions such as GPs, pharmacies and dentists. It would

be difficult to predict the effects of such a drastic measure on the current veterinary sector and we have not seen evidence that this analysis has been done.

The CCPC instead suggests that proportionate regulation could provide reassurance for consumers, including those in the agricultural sectors, that veterinarians employed by corporate owned practices would continue to deliver such services as part of a regulated obligation on the practice. The CCPC is aware, for example, that the Pharmacy Act 2007, and subsequent regulations made under that Act, impose obligations on the owners of retail pharmacies, including where that pharmacy owner is a corporate body. This approach ensures that the benefits of corporate ownership can be realised for pharmacies, while maintaining a high standard of clinical care and compliance with the law.

Conclusion

The CCPC considers that there is an opportunity to reassess how regulation of veterinary services can remain responsive to changes in the market, while ensuring that restrictions on entry into that market are proportionate. To that end we suggest that consideration be given to engagement with the Veterinary Council of Ireland and the wider veterinary sector to establish how regulation can be developed, while ensuring that the market remains open to new entry and innovation and continues to protect the interests of consumers and animals.