

## **SECTION27 WELCOMES THE RELEASE OF THE FINAL TERMS OF REFERENCE FOR THE COMPETITION COMMISSION'S HEALTH INQUIRY**

### **Introduction**

On Friday, 29 November 2013, the Competition Commission published the Final Terms of Reference for the inquiry into the private health sector (TOR). The publishing of this document follows from a period of public consultation, in which a range of stakeholders participated and gave input. SECTION27 is pleased that the TOR is more detailed and has been strengthened in many respects.

The Commission has committed to an inquiry that will be based on fairness, transparency and integrity. It is important that the Commission is seen to do so and that the public hold them to that promise by participating in the inquiry and monitoring the process as it unfolds.

### **The constitutional framework**

The inquiry is framed in terms of section 27 of the Constitution, which guarantees the right of access to health care services, and the Commission's broad socio-economic duties and functions in terms of the Competition Act. The TOR clearly sets out the rationale for the inquiry, its goals and objectives and deals with the subject matter more comprehensively. It also sets out the Commission's assumptions in clear language and provides information in support of the Commission's approach.

### **The goals and objectives**

The broad goal of the inquiry is to achieve accessible, affordable, innovative and quality private health care and promote pro-competitive outcomes. As a starting point, the Commission states that it is concerned about the high prices in private health care and the

increases in Medical Scheme expenditure that are apparent from publicly available information such as the annual reports of the Council for Medical Schemes. While there are varied explanations for these trends, the inquiry will evaluate and identify all the possible drivers of costs escalations to determine whether these factors have the effect of preventing, distorting or restricting competition in private health care.

The TOR points out that the health care markets will be identified through the inquiry process but acknowledges that there are varied markets, which are interrelated and that competition in one market affects other markets. Importantly, the TOR addresses the special nature of health care goods and services. In other words, they are not an ordinary commodity but are rather characterised as a merit good, as the benefits extend beyond the individual to society at large. This approach will certainly influence the analysis of the markets and the recommendations that will come out of the inquiry. SECTION27 agrees with this approach because we regard health and health care services as a human right, which all organs of state have a duty to respect, protect, promote and fulfill.

The subject matter of the inquiry is detailed and extensive in the final TOR. It deals with drugs to the extent that they are related to hospitals, health professionals, retail pharmacies and logistics arrangements. It also deals with medical devices and identifies the relationship between hospitals and emergency services, pathology and radiology for investigation.

The relationship between the public and private health sectors is also identified as an important area for investigation and will be important in the determination of recommendations that are intended to promote accessible, affordable, innovative and quality health care in the private sector. Crucially, the health care regulatory framework and the gaps in the framework will be investigated to determine the effect on competition.

### **The process**

The process is still not clear. A panel will be established but other than re-iterating that there will be public hearings and consultations, there is little information about how the inquiry will be run. The TOR does not identify the panel members or the support team that will assist the panel.

The panel will preside over hearings and oversee the report drafting process. The support team is expected to publish issue statements and interim reports for public comment and will assist the panel in reviewing submissions and drafting the final report. Interested parties are invited to make submissions to the panel when the inquiry commences. The details for engagement by the public will be in the inquiry guidelines that will be published later.

The health inquiry is scheduled to start on 6 January 2014. The final report will be published on 30 November 2015.

### **Conclusion**

We await more details about the process of the inquiry as well as the inquiry guidelines for participation, which are likely to include details about stakeholder participation, written and oral submissions, how confidentiality will be dealt with and the phases of the inquiry with timelines. The Commission will publish these documents on the new dedicated website - [www.healthinquiry.co.za](http://www.healthinquiry.co.za) prior to the commencement of the inquiry.

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