

Competition Commission Market Inquiry in the Private Health Care Sector

What do you need to know?

SECTION27 & Corruption Watch Civil Society Briefing on
Market Inquiry into the Private Health Sector

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SECTION27 Boardroom, Johannesburg

Introduction

- + NHA recognises socio-economic injustices, imbalances and inequities of health services of the past;

Sets a goal to:

- + “Unite the various elements of the national health system in a common goal to actively promote and improve the national health system in South Africa”.
- + The state has taken many steps to strengthen the health system and enable people to access quality, affordable health care services for all who live in South Africa and not just those who can afford it.

Recent developments to improve health systems in public & private

- + Several developments aimed at creating a more equitable health system and improving access to quality health care services for all:
 - + Largest HIV/AIDS testing and treatment programme
 - + Roll out of cancer prevention vaccine (HPV)
 - + Office of Health Standards Compliance
 - + Integrated School Health Policy
 - + National Health Insurance
 - + New SA Health Products Regulatory Authority
 - + Improvements in hospital management (training CEOs)
 - + Draft Intellectual Property Policy
 - + HPCSA ethical tariffs to ensure Drs don't overcharge
 - + **Competition Commission market inquiry into private health sector**

Human rights context of inquiry

- + Section 27 of the Constitution
 - + Everyone has the right to have access to health care services
- + To realise this right, government must take
 - + “reasonable legislative and other measures” to ensure that more and wider range of people enjoy this right over time.
- + In fulfilling this obligation:
 - + *“Government is entitled to adopt, as part of its policy to provide access to healthcare, measures designed to make medicines more affordable than they presently are” (Court case: Minister of Health v New Clicks, 2005)*
- + The right to health care also places some constitutional obligations on private parties.

The Competition Commission's role

- + The Commission will investigate the health care market to ensure that it is competitive and that it allows for access to the constitutional right to access to healthcare
- + The Commission may make recommendations for regulations and laws that ensure reasonable prices
- + It is crucial that civil society ensures that the Commission keeps the Constitution and peoples' right to health in the private healthcare market in focus when conducting the Inquiry!

What is the state of the private healthcare sector?

- + 17% of South Africa access their constitutional right to access to healthcare through the private sector.
- + Comprised of Medical Aid members and pure out of pocket expenses.
- + 2000-2010: Increase in spending on private hospitals more than double the rate of headline inflation. Why?

Composition of the market for private healthcare

- + The Commission needs to get a wide perspective. There are many different players that make up the market:
 - + Medical aid schemes (Estimated 81.2% of total private health care expenditure in 2012);
 - + Administrators and Brokers for medical aid schemes;
 - + Unregulated insurance products, such as hospital cash plans and gap cover;
 - + Private hospitals and several independent hospitals; the sector is dominated by three companies holding approximately 80% of the market (36% of total private health care expenditure).
 - + Specialists (20% of all private expenditure); General practitioners (GPs) and dentists (10% of all private expenditure);

Composition of the private health care market continued

- + Other players in the private health care inquiry include:
 - + Pharmaceutical companies supplying both branded and generic drugs;
 - + Medical device manufacturers and suppliers;
 - + Wholesalers, distributors and retailers and logistics providers; and
 - + Regulators such as the Council for Medical Schemes, Health Professions Council of South Africa, Department of Health and Medicines Control Council.

What is a market inquiry about?

- + For a market to work, firms must compete on **price, quality and range of services** they offer
- + For this to work there need to be **effective competitors** in the market and consumers need easily **accessible and accurate information** about the range of services and prices on offer
- + It should be remembered that healthcare is not an ordinary product or service, but a constitutional right.
- + The high prices in this market are therefore a particular cause for concern and the Commission will use the Inquiry to understand how the market produces the prices it does.

Specific objectives of Inquiry

- + To investigate and understand the following:
 - + **How are prices determined** in this sector and what factors contribute to this price? Ie. How doctors determine what to charge patients.
 - + What has the **impact of the Commission's previous interventions** in this market been? Ie. It's decision to prohibit the BHF and SAMA from setting tariffs.
 - + How do patients **access information** about healthcare services and **make choices** about their health?
 - + How do **existing laws and practices impact** on access to healthcare, and what gaps exist in the framework of health laws and policies?

What are the key issues the Commission will investigate?

- + To accomplish the objectives the Commission will look at various relationships within the market, including :
 - + The relationship between fees charged to medical members and those who pay out of pocket
 - + The relationship between prices charged and service volumes
 - + The relationship between the public and private sector
 - + Competition between health professionals
 - + How hospitals influence the demand for various health services
 - + The relationship between hospitals and doctors
 - + The influence of technology on costs and expenditure
 - + The influence of tender processes on product prices
 - + Factors that will create a competitive environment

What action can the Commission take after the Inquiry?

- + The Commission may recommend:
 - + New or amended policy, legislation and regulation
 - + Steps to be taken by other regulatory authorities
 - + The Commission will publish interim and final reports The final report will be tabled in Parliament
- + The Commission may use information emerging from the Inquiry to:
 - + Come to agreement with a firm on conduct revealed during the inquiry
 - + Further investigate the conduct of a firm
 - + Initiate and refer a complaint directly to the Competition Tribunal
- + **Note:** The Commission cannot set prices or draft laws and regulations itself.

Who will run the Inquiry?

- + **High level panel** will oversee public hearings, review submissions, draft the inquiry report and release the final recommendations of the inquiry:
 - + Former Chief Justice Sandile Ngcobo (Chair)
 - + Professor Sharon Fonn, Professor of Public Health and former Acting Dean of the Faculty of Health Sciences, University of the Witwatersrand
 - + Dr Ntuthuko Bhengu, Health Care Industry Expert
 - + Dr Lungiswa Nkonki, Senior Lecturer of Health Economics, University of Stellenbosch
 - + Mr Cornelis van Gent, Economist and former Director of Competition at the Dutch Healthcare Authority
- + Supported by a team of **investigators** including:
 - + economists and lawyers employed by the Commission
 - + various independent competition experts, lawyers and health care experts
- + Tamara Paremoer, an economist at the Competition Commission, is the inquiry director.

How will the Inquiry be run?

- + The inquiry will be run based on “fairness, transparency and integrity”
- + The Commission will request specific information from different players in the sector
 - + The Commission has the power to summon any person
 - + It may ask questions under oath
 - + Answering questions falsely is a criminal offence
- + The Commission will release statements on particular issues for public comment and should complete the inquiry by the end of 2015
- + **NB! It is crucial that civil society participates and frames the entire process of the inquiry and ensures that it is focused on the public interest and the right to access to health care services.**

Conclusion: Get Involved!!

- + The Inquiry provides an important opportunity to address inequality in the health system in South Africa.
- + SECTION27, together with its partners, will closely monitor the inquiry and ensure that the voice of ordinary users of private health services is heard by the inquiry and influences the findings of the Commission. **Please join a coalition of organisations that will participate in the market inquiry!**
- + The Commission must ensure that any recommendations it makes to the industry and the government will lead to the narrowing of inequality in the health system.
- + For more information...
 - + SECTION27 will post information about the inquiry and upcoming events at www@section27.org.za.
 - + Further details on the health inquiry will be published on the Commission's dedicated website at www.healthinquiry.co.za