

# The Competition Commission's Market Inquiry into the Private Health Care Sector





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## INTRODUCTION

On 6 January 2014, South Africa's Competition Commission began a market inquiry (an investigation) into the private health sector. The Commission is concerned about high prices in private health care and will use its wide powers to investigate the general state of competition in this sector to determine what can be done to achieve accessible, affordable, high quality and advanced private health care in South Africa.

This inquiry is important because it has the potential to unearth information about the way the private health sector is functioning and address concerns in order to improve access to health care services.

All interested and affected parties, including medical schemes, private hospitals, patients, patient groups and civil society organisations are entitled to participate in this market inquiry.

## THE HUMAN RIGHTS CONTEXT

According to Section 27 of the South African Constitution, everyone has the right to have access to healthcare services. The government's duty to protect and promote the right to health is not limited to the public sector, but applies in the private sector as well. The purpose of this fact sheet is to place the inquiry into a human rights context and to encourage the critical participation of the public in the inquiry.

The government has an obligation to progressively realise the right to health care services, which includes making laws and policies that help to make health care more affordable. This inquiry and its possible outcomes, which may include recommendations for regulations to ensure that prices are reasonable, are important steps to meet these obligations.

The Commission must promote the development of the economy and competitive prices and product choices for consumers. The preamble to the Competition Act confirms:

*‘That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focused on development, will benefit all South Africans.’*

The Constitution requires all sectors of government, business and society to strive for a transformed society based on democratic values, social justice and human rights. The government must take steps to regulate the private health care industry to meet these obligations. In addition, all persons, organisations and institutions that participate in the provision of private health care services have some constitutional obligations arising from the right to access to health care services.

**“GOVERNMENT IS ENTITLED TO ADOPT, AS PART OF ITS POLICY TO PROVIDE ACCESS TO HEALTH CARE, MEASURES DESIGNED TO MAKE MEDICINES MORE AFFORDABLE THAN THEY PRESENTLY ARE.”** (Court case: Minister of Health v New Clicks, 2005)



## WHAT DOES THE PRIVATE SECTOR LOOK LIKE?

The private health care sector is diverse, and includes funders (eg medical schemes), health care service providers (eg private hospital groups) and the regulators (eg Council for Medical Schemes). It serves about 17% of the population in South Africa – almost one in five. In 2012/2013, 3,815,431 principal members and 4,864,042 dependents belonged to medical aid schemes and accessed health care through the private sector. While medical aid membership is a useful way to look at the use of the private sector, some people access private health care purely on an out-of-pocket basis, particularly in rural areas. This effectively means they use their wages, grants and other income to pay for their health care.

SECTION27 is against profiteering by health care providers, medical schemes and others from the need for health care services. Between 2000 and 2010, the increase in spending on private hospitals was more than double the rate of headline inflation. The public needs to understand why. In our view, profiteering and inefficiency in the private sector can and should be controlled by effective regulation. Such regulation must lead to the use of resources, systems and expertise of the private sector to improve access to health care for all.

### THE PRIVATE SECTOR IS BROADLY MADE UP OF THE FOLLOWING:

- 1** Medical aid schemes e.g Discovery, Momentum, GEMS, Bonitas, Liberty and closed schemes that provide benefits to employees of a particular company only. It is estimated that medical schemes contributed about 81.2% of total private health care expenditure in 2012.
- 2** Administrators and Brokers for medical aid schemes.
- 3** Unregulated insurance products, such as hospital cash plans and gap cover.
- 4** Private hospitals and several independent hospitals; the sector is dominated by three companies - Netcare, Life Health care and Mediclinic - holding approximately 80% of the market. It is important to note that hospitals account for over 36% of total private health care expenditure and that the majority of them are positioned in urban areas and big cities.
- 5** Specialists e.g. surgeons, anaesthetists, radiologists, pathologists, gynaecologists, making up approximately 20% of all private expenditure.
- 6** General practitioners (GPs) and dentists, account for 10% of all private expenditure.
- 7** Pharmaceutical companies supplying both branded and generic drugs.
- 8** Medical device manufacturers and suppliers.
- 9** Wholesalers, distributors and retailers and logistics providers.
- 10** Regulators such as the Council for Medical Schemes, Health Professions Council of South Africa, Department of Health and Medicines Control Council.

The market inquiry will investigate how these various players interact with one another and with the public.

## WHAT IS THE MARKET INQUIRY ABOUT?

Markets work well when firms compete to win business by, amongst other things, achieving the lowest level of cost and prices and developing and offering services which meet consumers' needs more effectively than their competitors. This competitive process, when it works well, encourages innovation (new, advanced products) and provides consumers with more choices. However, in order to exercise their choices, consumers need access to readily available and accurate information about the services they are seeking and the various offerings available in the market.

While this competitive process is usually the manner in which markets work best for consumers, in health care, a greater importance needs to be placed on the level of quality provided as well as the availability of important information about health services because health care is not an ordinary good or service and is a fundamental human right and is often a matter of life or death.

According to the Commission, there are indications that the private health care market is not working well for consumers. The market inquiry will examine the causes of why the market may not be working effectively, and will make recommendations as to how they might be made to work better in order to promote and protect consumer interests, while ensuring that markets are fair and competitive. As such the Commission will specifically look into the increases in prices in private health care and determine the factors that are driving prices.

The primary rationale for instituting the inquiry is to achieve the right to access health care services. The Commission will specifically look at the trends in the sector and identify and evaluate the possible causes of cost, price and expenditure increases. The inquiry is therefore a crucial opportunity for the Commission to consider how prices are determined and what impact this and other factors have on access to health care services in the private sector.

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### SOME OF THE OBJECTIVES OF THE INQUIRY ARE TO:

- 1** Find out how prices are determined within the sector, for example, how a doctor decides on the amount to charge a patient for services that were provided.
  - 2** Assess the impact of the Commission's previous interventions and the impact on prices, such as the Commission's 2004 decision prohibiting the Board of Health care Funders and South African Medical Association from setting tariffs by collective bargaining.
  - 3** Determine what factors have led to the increases in private health care prices and expenditure.
  - 4** Evaluate how patients access information about health care services and exercise choices about their health.
  - 5** Assess how existing laws and practices impact on access to health and identify any gaps that might exist.
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### **WHAT ARE THE KEY ISSUES THAT THE MARKET INQUIRY WILL ADDRESS?**

The Commission will investigate the sector as a whole and the interrelationships between various parts of the sector. According to its terms of reference, some of the issues and questions it will investigate are:

- 1 The fees charged to individuals on medical aid versus those who pay out of pocket.**
- 2 The inter-relationship between prices charged and service volumes.**
- 3 The inter-relationship between the public and private sector.**
- 4 Competition between health professionals on the basis of price and quality.**
- 5 The role of hospitals in influencing the demand for health goods and services.**
- 6 The relationship between hospitals and services such as ambulances, pathology, medicines and medical devices, and whether these relationships push up costs.**
- 7 The relationship between hospitals and doctors and the impact of possible changes eg allowing hospitals to employ specialists.**
- 8 The influence of technology on costs and expenditure. Technology such as new tests to diagnose diseases such as TB quickly and accurately**
- 9 Influence of government tender processes on product prices in the private sector.**
- 10 Factors that are likely to create a more competitive environment so that health care decisions can be based on cost and quality of health care services.**

## WHAT CAN THE COMMISSION DO AT THE END OF THE INQUIRY?

### THE COMMISSION CAN RECOMMEND:

- 1 New or amended policy, legislation or regulations.
- 2 Steps to be taken by other regulatory authorities.

### THE COMMISSION CAN ALSO TAKE FORWARD ANY INFORMATION THAT COMES OUT OF THE MARKET INQUIRY, AND CAN:

- 1 Come to an agreement with a company on its conduct as revealed in the inquiry.
- 2 Further investigate the conduct of a specific company.
- 3 Initiate and refer a complaint directly to a higher competition authority known as the Competition Tribunal to resolve it. The Tribunal can impose fines of up to 10% of company's annual turnover.

The Commission will not set prices in this process and will not draft laws or regulations but will make the specific recommendations to the relevant regulators.

*South Africa is not the only country to conduct such an inquiry. In 2013, the United Kingdom's Competition Commission finalised a similar inquiry into the private health sector. It found that some of the private hospitals faced little competition and said "Private hospitals compete to attract those consultants who are likely to generate the most revenue for them". One of the groups is partly owned by Netcare and may be forced to sell some of its hospitals in the UK.*





## HOW WILL THE MARKET INQUIRY BE RUN

The Commission will ask for specific information from different players in the sector through information requests, consultations and in public hearings.

The Commission has the power to summon any person who is believed to have information or to be in possession of documents relevant to the inquiry to appear before it or to produce any relevant documents. The Commission may also question any person under oath. Failure to answer any questions and the giving of false evidence are criminal offences under the Competition Act.

The Commission will release statements on particular issues and/or interim reports to explain the Commission's view on the issues throughout the inquiry. The Commission has committed to seeking public comments on the interim reports and will give the public a reasonable opportunity to provide input during the inquiry. Given the broad range of vested interests there is a clear need for organisations and members of civil society to collect evidence, participate in public hearings and generally participate in the process as a whole to ensure that diverse opinions are heard and that the public interest is at the heart of the inquiry.

The final inquiry report will take account of public input and will include all of the Commission's recommendations for changes to the way in which the private sector operates. The final report will be released within two years of starting the inquiry and the Minister of Economic Development must table the report in Parliament within 10 days of receiving it.

The Commission has committed to running an inquiry that is based on 'fairness, transparency and integrity'. The inquiry will be run primarily by a high level panel, which will oversee public hearings, review submissions, draft the inquiry report and release the final recommendations of the inquiry.

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### THE PANEL MEMBERS ARE:

- 1 Former Chief Justice Sandile Ngcobo (Chair)**
  - 2 Professor Sharon Fonn, Professor of Public Health and former Acting Dean of the Faculty of Health Sciences, University of the Witwatersrand**
  - 3 Dr Ntuthuko Bhengu, Health Care Industry Expert**
  - 4 Dr Lungiswa Nkonki, Senior Lecturer of Health Economics, University of Stellenbosch**
  - 5 Mr Cornelis van Gent, Economist and former Director of Competition at the Dutch Health care Authority**
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A team of investigators will support the panel in its work. The team will include internal economists and lawyers from the Commission as well as an independent research team made up of actuaries, health economists, competition experts, lawyers and health care experts. Tamara Paremoer, an economist at the Competition Commission, is the inquiry director.



## CONCLUSION

The inquiry provides an 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. The Commission must ensure that any recommendations it makes to the industry and the government will lead to the narrowing not widening of inequality in the health system.

Further details on the health inquiry will be published on the Commission's dedicated website at [www.healthinquiry.co.za](http://www.healthinquiry.co.za) and SECTION27 will post information about the inquiry and upcoming events at [www@section27.org.za](http://www@section27.org.za).

If you have information that you think should be made available to the inquiry or if you wish to join a coalition of organisations that will participate in the market inquiry, contact us at 011 356 4100 or [info@section27.org.za](mailto:info@section27.org.za).



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