

Submission

Draft Statement of Issues (Competition Commission South Africa, 30 May 2014)

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1. Introduction and background

- 1.1. The Helen Suzman Foundation (HSF) would like to submit its comments to the Competition Commission of South Africa (CC) on the Draft Statement of Issues for Market Inquiry into the Private Healthcare Sector (30 May 2014).
- 1.2. The Helen Suzman Foundation (the “HSF”) is a civil society organisation (NPO No. 036-281) that promotes liberal constitutional democracy and upholds the principles of the South African Constitution. The HSF is committed to reasoned discourse, fairness and equity, the protection of human rights, and the promotion of the rule of law.
- 1.3. The HSF comes from the premise that access to healthcare is a fundamental human right. The HSF has been involved in matters of healthcare since 2009 and has made several interventions including a detailed submission on the National Health Insurance Green Paper; interventions on the issue of demarcation between medical schemes and health insurance products; and consultations and submissions on the Health Professions Council of South Africa’s (HPCSA) Guideline tariff setting for medical and dental practitioners; and submissions to the CC on the Terms of reference for the Market Inquiry.
- 1.4. Given the combination of lobby groups, vested interests and areas of regulatory or policy stagnation, there is a clear need for members of civil society, such as the HSF, to engage in this matter in order to assist in protecting the public interest.
- 1.5. Although the vast majority of South Africa’s population rely on the public health system to deliver their healthcare, at least 17% of the population (P77 of ToR suggest that this was the stat in 2011/2012), who are members of medical schemes, rely on the private healthcare system for their healthcare. This figure does not include the potentially many other individuals who use the private healthcare system and pay for it out of pocket. It is thus very important that the private healthcare system functions efficiently and effectively and plays its part in the provision of the right of access to healthcare.
- 1.6. It is in this light that the HSF welcomes the Private Healthcare Market Inquiry and the opportunity it presents to gain a better understanding of the market and where the problems lie, with a view to suggesting appropriate remedies.

1.7. This is so, provided that the Market Inquiry is conducted systematically, transparently and fairly, involving all relevant stakeholders, in order to ultimately benefit consumers and patients.

1.8. In this submission, the HSF wishes to comment only on specific areas of the Draft Statement of Issues.

2. Oversight

2.1 Sections 27 & 28: It is unclear whether the Panel will, among other things, specifically investigate preferred providers as stipulated or recommended by medical schemes. Are the potential agreements between medical schemes and healthcare providers transparent and above board? Do they fall under what is considered anti-competitive behaviour?

2.2 Section 31: According to the expressed concerns, we believe that the Panel will not only need to investigate healthcare practitioners', but also pharmacies' relationships with pharmaceutical companies (manufacturers and distributors) in order to understand the issues behind lack of generic substitution.

2.3 Section 37: To what do these key services refer? Please provide specifics. Please note that high costs may also stem from a lack of transparency regarding the pricing of pharmaceuticals and medical equipment at a manufacturer level. These are costs incurred before the SEP is decided and which manufacturers are not obliged to disclose. This lack of transparency affects the price of medical services at every level of the supply chain.

2.4 Section 47: We require more certainty or at least a clearer understanding of which methods will be used.

2.5 Section 50: We require specification on the approach that will be used. Is it advisable to use different methods for different theories of harm? These could lead to contradictory or confusing results. We understand that more investigation on this is required, but would ask for more explicit information on this important point.

3. Notable Issues

- 3.1 Section 17: It is unclear whether the Panel will investigate instances of vertical integration and the legality of mergers and ownership structure within the industry. A separate but related concern is whether medical goods are supplied to different players at different prices in contravention of the Medicine and Related Substances Control Act. Discounts offered may take the form of kick-backs and underhanded incentives, sometimes disguised as ‘marketing fees’.
- 3.2 Section 38: The HSF is concerned that one cannot focus on general practitioners without investigating the relationship between doctors and pharmaceutical companies or their representatives. Doctors direct patients to pharmacies and medicines. The relationship between doctor and pharmaceutical company could be an important part of the investigation into anti-competitive behaviour.
- 3.3 Section 69: Accountability is important. It is not enough to have policies without enforcement mechanisms through which regulations are monitored. The chain of accountability needs to be investigated against relevant policy and legislation.

4. Right to Healthcare

- 4.1 Sections 22 & 23: We request that self-payment gaps are investigated in accordance with citizens’ right to healthcare. Large self-payment gaps may infringe upon these rights. Consumers pay large monthly amounts for their medical schemes and are sometimes only covered for a quarter or half of a year by these schemes. Citizens continue to pay these monthly amounts and must then also pay out of pocket for what the scheme professed to provide in the first place. In the interest of the right to Healthcare, we urge the Commission to evaluate if the extent of these self-payment gaps is absolutely necessary for the survival of these corporations.

5. General Comments

5.1 Section 18: We are concerned about aspects of the market and its directed research that may seem initially unimportant, but on a closer look, are central to, or at least a part of the chain of any possible market failure.

5.2 We ask that you are open to investigating the pharmaceutical industry as part of a future project. This industry is large and multi-faceted and requires its own investigation. The pharmaceutical industry is an important link in the healthcare chain.

5. Conclusion

6.1. The HSF thanks the CC for the opportunity to engage on this important matter. We will be taking a distinct interest in the proceedings and outcomes of the Inquiry and would be happy to assist further as the process unfolds.