



**H e a l t h M a r k e t I n q u i r y**

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Promoting Healthy Competition

# MARKET DEFINITION FOR FINANCING OF HEALTHCARE

18 November 2016

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## **ABBREVIATIONS**

African Life Health (Pty) Ltd (African Life)

Bestmed Medical Scheme (Bestmed)

Bonheur 94 General Trading (Pty) Ltd (Bonheur 94 General Trading)

Bonitas Medical Fund (Bonitas)

Chartered Accountants (SA) Medical Aid Fund (CAMAF)

Competition Commission of South Africa (Commission)

Competition Tribunal of South Africa (Tribunal)

Council for Medical Schemes (CMS)

Health Market Inquiry (HMI)

Discovery Health Medical Scheme (DHMS)

Discovery Health (Pty) Ltd (Discovery Health)

Fedhealth Medical Scheme (Fedhealth)

Government Employees Medical Scheme (GEMS)

Managed care organisations (MCOs)

Medical Schemes Act No. 131 of 1998 (MSA)

Medical Services Organisation (MSO)

Medikredit Integrated Healthcare Solutions (Pty) Ltd (Medikredit)

Mediscor PBM (Mediscor)

Medscheme Holdings (Pty) Ltd (Medscheme)

Medshield Medical Scheme (Medshield)

Metropolitan Holdings Limited (Metropolitan)

Momentum Group Limited (Momentum)

Universal Healthcare Services (Pty) Ltd (Universal Healthcare)

## INTRODUCTION

- 1.1. The Competition Commission (Commission) Health Market Inquiry (HMI) is an inquiry into the state, nature and form of competition in the South African private healthcare sector. The Commission has reason to believe there are features of the private healthcare sector that prevent, distort or restrict competition. The Statement of Issues, published on 1 August 2014, identified a number of potential sources of harm to competition in the South African private healthcare sector. Subsequently, the HMI published a Revised Statement of Issues on 11 February 2016, which further elaborates on the HMI's areas of focus. The HMI seeks to assess whether, and (if so) to what extent, these potential sources of harm exist. Following the assessment phase of the inquiry the HMI will make recommendations on how competition within the private healthcare sector can be promoted.
- 1.2. As a starting point for assessing competition in the private healthcare sector, the HMI will define the relevant markets. Market definition is an analytical tool that provides a framework to assess the existence (or otherwise) of market power, and thus the prevailing state of competition in the market. In defining the market, the HMI will consider (i) the relevant product market; and (ii) the relevant geographic market. The relevant product market comprises all products and/or services that the consumer regards as interchangeable or substitutable, by reason of the 'products' or 'services' characteristics, prices and intended use. The relevant geographic market is the area within which rival firms currently supply, or could supply the relevant product(s) to the consumers. For a detailed explanation on market definition see *Methodology Paper: Approach to Assessing Market Power of Health Facilities*.<sup>1</sup>
- 1.3. The private healthcare sector comprises a number of interrelated markets which can be divided into broad categories namely financing of healthcare, provision of healthcare (including facilities and practitioners) and consumables. This document defines the various markets within the broader category of financing of healthcare, particularly medical schemes, medical scheme administrators and managed care organisations (MCOs). This document does not define markets for brokers and healthcare insurance. In defining each of the markets, the HMI considered the following aspects (i) key provisions of the Medical Schemes Act No. 131 of 1998 (MSA); (ii) characteristics of the product; (iii) preceding Commission cases and Competition Tribunal (Tribunal) decisions and (iv) the views of stakeholders.

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<sup>1</sup> Health Market Inquiry (HMI). Methodology paper: Approach to assessing market power of health facilities. March 2016.

## MEDICAL SCHEMES

### Product market

- 1.4. Medical schemes are not-for-profit entities that belong to their members.<sup>2</sup> Boards of trustees manage medical schemes according to the rules and regulations set out in the MSA.
- 1.5. Medical scheme members pay a monthly premium to their medical scheme. The medical scheme combines the members' monthly contributions to form a risk pool.<sup>3</sup> Medical schemes use funds from their risk pool to pay for their members' healthcare expenditure within the parameters of the medical scheme benefit structure and rules. Some medical scheme benefit options may have a medical savings component. The savings component is a fixed amount that the medical scheme provides to its members at the beginning of the year. The member uses the funds from their medical savings account to pay for day-to-day medical expenses. The portion of the members' monthly contribution that goes towards their savings component is not combined with the premium contributions in the risk pool. A portion of members' monthly premiums goes towards non-healthcare costs, which are the costs the medical scheme incurs to operate. These costs include fees for administration, managed care and broker services.
- 1.6. The Council for Medical Schemes (CMS) distinguishes between two types of medical schemes, open and restricted. Any individual from the general population can join an open medical scheme in exchange for the monthly premium. Restricted medical scheme membership is reserved for a select group of individuals such as employees of a certain industry, organisation, association or union.<sup>4</sup>
- 1.7. The key question to address in the assessment of the medical scheme market is whether open and restricted medical schemes constitute a broad single market or two separate markets.

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<sup>2</sup> <https://www.medicalschemes.com/consumer/FAQ.aspx#Q53>.

<sup>3</sup> The medical scheme industry is built on the principle of risk pooling, which means that the young, generally healthy, population pay the same contributions as the older and often less healthy, and therefore the system is cross-subsidizing.

<sup>4</sup> <https://www.medicalschemes.com/consumer/FAQ.aspx#Q6>.

## ***Key provisions of the Medical Scheme Act***

1.8. Provisions in the MSA clearly differentiate between open and restricted medical scheme membership. Open enrolment is a provision of the MSA that requires open medical schemes registered in South Africa to accept every person who wishes to join as a member or dependant.<sup>5</sup> Section 29(3)(a) of the MSA stipulates that “[a] medical scheme shall not provide in its rules for the exclusion of any applicant or a dependant of an applicant, subject to the conditions as may be prescribed, from membership, except for a restricted membership scheme as provided for in this MSA”.<sup>6</sup> Restricted medical schemes, on the other hand, are set up by employers of certain industries, organisations, associations or unions for their employees and dependents. Chapter 1 of the MSA defines a restricted membership scheme as, “a medical scheme, the rules of which restrict the eligibility for membership by reference to-

1.8.1. employment or former employment or both employment or former employment in a profession, trade, industry or calling;

1.8.2. employment or former employment or both employment or former employment by a particular employer, or by an employer included in a particular class of employers;

1.8.3. membership or former membership or both membership or former membership of a particular profession, professional association or union; or

1.8.4. any other prescribed matter.”

1.9. The MSA separates open and restricted medical scheme membership by the stringent eligibility criteria. This restricts the ability of restricted medical schemes to attract members from open schemes, unless the member of the open medical scheme meets the restricted medical scheme’s eligibility criteria.

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<sup>5</sup> Council of Medical Schemes News Issue 1 2010-2011. What medical scheme are all about? p 2.

<sup>6</sup> Medical Schemes Act of 1998.

## ***Characteristics of the product***

### *Choice within restricted medical schemes*

- 1.10. The MSA sets out the criteria for restricted membership, and the employer determines the provisions for members within the restricted medical scheme. These provisions differ among restricted medical schemes and may include compulsory or voluntary membership, option of joining an open medical scheme and subsidies. As such, an employer may make it compulsory for employees to join the employer's restricted medical scheme. However, employers with restricted medical schemes may allow employees to join alternative medical schemes, but may impose certain conditions on their employees. For example, the employer may restrict the number of medical schemes from which an employee can choose between. In some instances, employees may forgo their subsidy if they choose to join an alternative medical scheme. So while employees may have the option of joining an open medical scheme, the subsidy may incentivise them to join or remain on the restricted medical scheme. Employees may also opt to not join their employer's restricted medical scheme but instead join their spouses' medical scheme, which may be an open medical scheme.
- 1.11. Some restricted medical schemes allow their senior employees to join other medical schemes, but this rule may not apply to the rest of the employees in the organisation. For example, some government employees earning above a specified pay grade are not restricted to join Government Employees Medical Scheme (GEMS). These employees are able to join an open medical scheme without losing the subsidy, as they are paid on a cost to company basis.
- 1.12. Examples of some of the medical schemes that impose conditions on members are shown in Table 1 below.

**Table 1.1: Choice restrictions associated with some of the key restricted schemes**

| Medical scheme                                     | Membership criteria  | Restrictions on choice   |
|--|--|--|
| Government Employees Medical Scheme (GEMS)         | National department, provincial department and administration and organisational components. <sup>7</sup>  | Choice provided but full subsidy only available to employee on GEMS. <sup>8</sup>                              |
| LA-Health Medical Scheme                           | Local government. <sup>9</sup>   | Other specified choices of KeyHealth, SAMWUMED, Bonitas Medical Fund, Hosmed Medical Aid Scheme. <sup>10</sup> |
| Bankmed  | Only employees within banking institutions may become members. <sup>11</sup>   | For most banks: compulsory membership, no choice.  |
| Nedgroup Medical Aid Scheme                        | Nedbank and Mutual and Federal employees. <sup>12</sup>  | Compulsory membership, no choice.  |
| Remedi Medical Aid Scheme                          | Remgro employees. <sup>13</sup>  | Compulsory membership, no choice. <sup>14</sup>  |
| Netcare Medical Scheme                             | Netcare employees. <sup>15</sup>   | Compulsory membership, no choice.  |
| Profmed  | Graduate professionals. <sup>16</sup>  | Choice available.  |
| Chartered Accountants (SA) Medical Aid Fund (CMAF) | Membership is offered to individuals who hold the designation Chartered Accountant [CA(SA)], or Associate General Accountant [AC(SA)], or Professional | Many firms offer choice while others do not.   |

<sup>7</sup> <https://www.gems.gov.za/default.aspx?PuXYYL7mbiapORWb8E/0mLoGNK1c0x+nft2kVI5Cw3U>.

<sup>8</sup> <https://www.gems.gov.za/default.aspx?PuXYYL7mbiapORWb8E/0mLoGNK1c0x+nft2kVI5Cw3U>.

<sup>9</sup> <http://www.lahealth.co.za/schemes/lahealth/>.

<sup>10</sup> [http://www.salgbc.org.za/index.php?option=com\\_jdownloads&Itemid=110&view=view.download&catid=297&cid=7902](http://www.salgbc.org.za/index.php?option=com_jdownloads&Itemid=110&view=view.download&catid=297&cid=7902).

<sup>11</sup> Bankmed member handbook, p 6.

[https://www.bankmed.co.za/medicalschemes\\_zs/bankmed/web/health/linked\\_content/documents/how\\_to\\_join/bankmed\\_member\\_handbook\\_2016.pdf](https://www.bankmed.co.za/medicalschemes_zs/bankmed/web/health/linked_content/documents/how_to_join/bankmed_member_handbook_2016.pdf).

<sup>12</sup> <http://medical-plan-advice.co.za/medical-aids/articles/316-nedgroup-medical-aid>.

<sup>13</sup> <http://www.yourremedi.co.za/schemes/remedi/>.

<sup>14</sup> <http://www.yourremedi.co.za/schemes/remedi/>.

<sup>15</sup> [http://www.netcaremedicalscheme.co.za/live/index.php?Session\\_ID=e58d7c5015edd7b20daf08b1aba6a6c2](http://www.netcaremedicalscheme.co.za/live/index.php?Session_ID=e58d7c5015edd7b20daf08b1aba6a6c2).

<sup>16</sup> <http://www.profmed.co.za/Profmed-Who-Qualifies>.

|  |   |  |
|--|---|--|
|  | Accountant (SA), or Chartered Certified Accountant, or Fellow Chartered Management Accountant and Professional Accounting Firms <sup>17</sup> . |  |
|--|---|--|

Source: See Discovery Health Medical Scheme, 13 December 2014, First submission, p 51.

- 1.13. Therefore, where the employer with a restricted medical scheme provides employees with the option to join (an) open medical scheme/s, then in this context there is some competition between restricted medical schemes and open medical schemes.
- 1.14. There are two relatively small restricted medical schemes that compete to some extent with open medical schemes for prospective members. Chartered Accountants (SA) Medical Aid Fund (CAMAF) and Profmed Medical Aid Scheme are restricted medical schemes, but their eligibility criteria are less stringent than most restricted medical schemes. The eligibility criteria are based on individuals' educational qualifications and professional status and are not employer specific. As shown in the table above, membership for Profmed is restricted to graduate professionals, so in essence, Profmed and the other open medical schemes compete for members that are graduates. Similarly, membership for CAMAF is restricted to professional accounting firms and individuals that hold the designated qualification. Therefore, CAMAF competes with open medical schemes for members from the general population who meet the qualifications and professional status requirements.

*Entry and expansion into the medical scheme market*

- 1.15. An employer with a restricted medical scheme will assess whether its restricted medical scheme provides value for money for its employees compared to that which is available in the open medical scheme market. If the value is perceived to be greater in the open medical scheme market, then the employer may decide to amalgamate with an open medical scheme or another restricted medical scheme (where the relevant criteria are met). For example, Sappi Medical Aid Scheme amalgamated with Bestmed Medical Scheme (Bestmed) in 2013<sup>18</sup> and PG Bison Medical Aid Society merged with Discovery Health Medical Scheme (DHMS) in 2014.<sup>19</sup> Restricted medical scheme Mutual & Federal Medical Aid Fund

<sup>17</sup> <http://www.camaf.co.za/do-i-qualify/>.

<sup>18</sup> Council of Medical Schemes. Annexure to the Annual report 2014-2015.

<sup>19</sup> Council of Medical Schemes. Annexure to the Annual report 2014-2015.

amalgamated with another restricted medical scheme, Nedgroup Medical Aid Scheme in 2007.<sup>20</sup>

1.16. An open or restricted medical scheme can enter the market if it meets the criteria set out in the MSA. In theory, if an employer groups are of the view that open medical schemes are too expensive or offer little value, they could open their own restricted medical scheme. In essence, these newly formed medical schemes would compete directly with the open medical schemes as the open medical schemes would lose members to the newly formed restricted schemes.

1.17. The extent to which this happens in practice will be tested in the barriers to entry and expansion analysis.

### ***Marketing in the medical scheme market***

1.18. In general, restricted medical schemes do not engage in membership expansion plans or marketing as membership is restricted to the number of employees in an organisation or industry or who meet the specific criteria.<sup>21</sup> However, where there is some competition with other medical schemes, restricted medical schemes do market their products. For example, Profmed indicated that they have to market their product and brand to attract members.<sup>22</sup> Discovery Health (Pty) Ltd (Discovery Health) restricted medical scheme client, LA Health Medical Scheme, also requires marketing and distribution support functions.<sup>23</sup> LA Health Medical Scheme provides membership to employees of local government, but employees have the option to join the restricted medical scheme SAMWUMED or open schemes, Bonitas Medical Aid Fund (Bonitas), KeyHealth, and Hosmed Medical Aid Scheme.

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<sup>20</sup> Council of Medical Schemes. Annexure to the Annual report 2008-2009.

<sup>21</sup> See Retail Medical Scheme, May 2015, Response to information request, Annexure A, Q 7.2, p 10 and See Anglovaal, 18 March 2015, Response to information request, Q 7.2 p 12.

<sup>22</sup> See Profmed, April 2015, Response to information request, Q 7.2, p 54.

<sup>23</sup> See Discovery Health, November 2014, First Submission, para 483, p 181.

## ***Review of preceding Competition Commission cases and Competition Tribunal decisions***

- 1.19. The HMI reviewed the relevant mergers that were notified to the Commission during the period 2010-2014. During the course of this period there were 12 mergers: two small, eight intermediate and two large.<sup>24</sup> This section discusses the large mergers that were heard before the Tribunal.
- 1.20. In 2010, Metropolitan Holdings Limited (Metropolitan) acquired Momentum Group Limited (Momentum). In this merger, both companies had medical schemes within their respective structures. Metropolitan has a restricted medical scheme, Metropolitan Staff Medical Scheme exclusively for Metropolitan employees and Momentum has an open medical scheme, Momentum Health Medical Scheme (Momentum Health).
- 1.21. The Tribunal considered the Commission's findings that a broadly defined market for the provision of medical scheme products could be delineated into separate relevant markets respectively; 1) open, and 2) closed or restricted medical schemes.<sup>25</sup> If the medical scheme market was defined as separate markets there would be no overlap in the activities of the merging parties at this level.<sup>26</sup> This implies the merging parties are not competitors and the merger is unlikely to lessen competition. The Tribunal then considered a scenario in which the merging parties competed in the same market, which is the broad market for medical schemes. The Tribunal concluded that if the medical scheme market is broadly defined, the combined medical schemes would have less than 5% market share based on the number of members. Given the low combined market share the merger was unlikely to adversely affect competition, thus the Tribunal did not further consider the medical scheme market.<sup>27</sup> As such the Tribunal did not conclude whether there was a broad market for medical schemes or separate markets for open and restricted medical schemes.

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<sup>24</sup> The Competition Commission and Competition Tribunal serve a specific function within the framework of Competition Regulation. The Commission is the investigation and enforcement agency and the Tribunal is the adjudicative body. The Commission investigates and makes a decision in relation to small and intermediate mergers. For large mergers, the Commission conducts an investigation and makes a recommendation to the Tribunal for the ultimate decision. As such, the Tribunal rules on large mergers and only in the case of small or intermediate mergers when a person who has a material interest in the relevant matter intervenes. Both are statutory bodies created by the Competition Act No.89 of 1998 (As amended).

<sup>25</sup> Metropolitan Holdings Limited / Momentum Group Limited [2010] (Case No. 41/LM/Jul10), p 6.

<sup>26</sup> Metropolitan Holdings Limited / Momentum Group Limited [2010] (Case No. 41/LM/Jul10), p 7.

<sup>27</sup> Metropolitan Holdings Limited / Momentum Group Limited [2010] (Case No. 41/LM/Jul10), p 12-13.

1.22. In 2012 Bonitas acquired<sup>28</sup> Pro Sano Medical Scheme, both are open medical schemes.

The Tribunal did not conclude on a market definition, as the market share accretion was less than 2% of the broader medical scheme market. The Tribunal considered this to be too low to raise any competition concerns.<sup>29</sup>

### ***Views expressed in stakeholders' submissions***

1.23. When defining the relevant product market for medical schemes, the HMI considered the views expressed in the stakeholders' submissions. Metropolitan, Fedhealth Medical Scheme (Fedhealth), Discovery Health and DHMS considered the relevant medical scheme market in their submissions.

1.24. According to Metropolitan, employers typically consider membership of their restricted medical scheme as an employee benefit and mandatory membership is often a condition of employment.<sup>30</sup> Therefore, open medical schemes differ from restricted medical schemes in that the latter do not compete for members. Fedhealth shared a similar view and stated that while there is a degree of competition between open medical schemes for restricted medical scheme members, these schemes operate for the most part in two separate markets. Fedhealth attributed this to the specific eligibility criteria of restricted medical schemes that limit their ability to attract members from open schemes.<sup>31</sup>

1.25. DHMS submitted that although there is a degree of competition for beneficiaries between open and restricted schemes, these schemes do not generally compete with one another. DHMS attributed this to the following factors: (i) the beneficiaries must meet the specific eligibility criteria when joining a restricted scheme, (ii) employers may not offer other medical scheme options to their employees; and (iii) if alternative schemes are available to employees, these may be limited in choice.<sup>32</sup>

1.26. Discovery Health submitted that some restricted medical schemes compete directly with open medical schemes to attract individual members and employee groups. Discovery Health referred specifically to CAMAF and Profmed who, as discussed above, restrict their

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<sup>28</sup> Pro Sano Medical Scheme transferred their business comprising of Pro Sano's medical scheme business, assets, liabilities, contracts and employees to Bonitas Medical Scheme.

<sup>29</sup> Bonitas Medical Fund/ Pro Sano Medical Scheme [2012] (Case No 97/LM/Oct12), p 3.

<sup>30</sup> See Metropolitan Health, 18 December 2014, First submission, p 3.

<sup>31</sup> See Fedhealth, 31 October 2015, First Submission, p 9.

<sup>32</sup> See Discovery Health Medical Scheme, 13 December 2014, First submission, p 49-50.

membership by professional or educational qualifications.<sup>33</sup> Discovery Health included CAMAF and Profmed in their open medical scheme market share calculations.

- 1.27. Therefore, these stakeholders are of the view that while there are some instances where open and restricted medical schemes compete, for the most part these schemes do not compete directly with each other.

### ***Conclusion on product market***

- 1.28. The HMI concludes that open and restricted medical schemes, for the most part, compete in separate product markets. However, the HMI does recognise that in some instances members of some restricted medical schemes can join open medical schemes, while the reverse is not true unless the individual meets the specific membership criteria. The HMI also recognises that restricted medical schemes like CAMAF and Profmed compete more directly with open medical schemes than the typical employer based medical schemes.
- 1.29. The HMI will consider the extent to which open medical schemes discipline restricted medical schemes as there is always an option for an employer to amalgamate its restricted medical scheme with an open medical scheme. Conversely, the HMI will consider the extent that the threat of entry into the restricted medical scheme market poses a level of constraint on open medical schemes.
- 1.30. The HMI will define the relevant medical scheme market as separate markets, the market for open and restricted medical schemes. However, given that a market inquiry is broader than a merger or enforcement investigation, the HMI will also consider the extent to which open and restricted medical schemes compete for the same beneficiaries in the longer term.

### ***Geographic market***

- 1.31. Open medical schemes, by their nature of being open, compete for members on a national basis, as anyone can join an open medical scheme. As mentioned above, the MSA requires that every open medical scheme registered in South Africa accept every person who wishes to join as a member or dependent. The HMI recognises that some open medical schemes have the majority of their members concentrated in one region. For example, a large number

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<sup>33</sup> See Discovery Health, 17 November 2014, First submission, p 169-170

of Cape Medical Plan's members reside in Western Cape, but it still has members located throughout the country.

- 1.32. There are also some restricted medical schemes that only provide membership to individuals working for companies that are located in specific regions. For example, Alliance Midmed Medical Scheme provides medical scheme cover to individuals working for Columbus Stainless Steel, which is situated in Middelburg. Another example, is Witbank Coalfields Medical Aid Scheme which provides membership to employees that work in Witbank coal mines and to employees working in other coal mines located outside the Witbank area, provided their employer is a member of the scheme.<sup>34</sup> Similarly, members of SAMWUMED are predominantly based in the Western Cape.
- 1.33. For purposes of the Inquiry, the HMI defines a national market for the provision of medical scheme products with the recognition that in some instances there may be some regional dynamics.

## **MEDICAL SCHEME ADMINISTRATORS**

### **Product market**

- 1.34. Medical schemes, regardless of being open or restricted, may elect to conduct all their administration functions in-house and are referred to as self-administered medical schemes in the MSA. On the other hand, medical schemes may also choose to contract with a third-party administrator to perform a set of functions for a stipulated fee. Given this dynamic, the HMI will consider the types of services administrators provide and whether self-administered medical schemes compete with third party administrators in the broad medical scheme administrator market.
- 1.35. The HMI will also consider the services third-party administrators provide to their open and restricted medical scheme clients.

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<sup>34</sup> See Witbank Medical Scheme, May 2015, Response to information request, Witbank Medical Scheme Rules, Annexure F.

## ***Key provisions of the Medical Schemes Act***

- 1.36. In the MSA, the definition of “administrator” includes self-administered medical schemes. Part B, Section 17 of the MSA sets out the accreditation criteria for third party administrators of medical schemes. The purpose of accrediting administrators is to ensure institutional safety and soundness of medical schemes. Self-administered medical schemes are required to maintain the same standard of administration as third- party administrators.<sup>35</sup> Self-administered medical schemes are not required to be accredited as an administrator in terms of the MSA, but still need to be registered as a medical scheme.
- 1.37. Other provisions in the MSA governing administrators, cover procedures relating to accreditation, agreement of administration functions, and termination of agreements and the duty to maintain a financially sound condition.

## ***Characteristics of the product***

- 1.38. Irrespective of being third-party administered or self-administered, each administrator will perform a set of administrative duties to ensure the functioning of the medical scheme such as: membership records; contribution management; claims management; financial management reporting; information management; and data control and customer service. In addition, open self-administered medical schemes and third party administrators for open medical schemes also provide marketing and distribution services to attract members to their medical schemes.
- 1.39. Third-party administrators may perform a full set of administration services or a selection of services. This arises where a medical scheme decides to perform some administration functions in-house or, alternatively, to contract with more than one administrator. For example, DHMS contracts with Discovery Health for the full range of administration services.<sup>36</sup> Alternatively, GEMS has administration contracts with Medscheme Holdings (Pty) Ltd (Medscheme) and Metropolitan and, in addition, it conducts its own tariff negotiations with healthcare providers.<sup>37</sup>

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<sup>35</sup> Council of Medical Schemes, Requirements for Medical Scheme Administrators February 2010, p 29.

<sup>36</sup> See Discovery Health, 17 November 2014, First submission, p 180.

<sup>37</sup> Transcript from Public Hearing held at Cape Town International Convention Centre Cape Town, 01 March 2016, Government Employees Medical Scheme, p 230.

1.40. There are certain services that third-party administrators or subsidiaries within the holding group provide, such as reward/loyalty programs, that self-administered medical schemes cannot provide in-house. The MSA regulates the business of a medical scheme and under Section 26 of the MSA, no medical scheme may carry on business other than the business of a medical scheme. This means that the activities of a medical scheme are restricted to a defined set of activities. As such, self-administered medical schemes cannot develop and offer reward/loyalty programs as the expenditure for these programs would be considered non-healthcare expenditure. However, self-administered medical schemes may offer such programmes to their members, provided the programmes are administered by third parties and are optional for the member to join. For example, Medshield Medical Scheme (Medshield) has a loyalty programme, Medshield More, which a third party administers. In this regard, the CMS finds this type of expenditure acceptable whereas a loyalty programme developed and administered in-house by a (self-administered) medical scheme would be regarded as unacceptable.

### ***Review of previous Commission and Tribunal cases***

1.41. There were five mergers and acquisitions within the administrator market between 2012 and 2013, of which two were large and three were intermediate. The HMI also considered the merger between Momentum/ African Life Health (Pty) Ltd (African Life) in 2005 and Momentum / Bonheur 94 General Trading (Pty) Ltd (Bonheur 94 General Trading) in 2004. The HMI reviewed these two earlier merger decisions by the Tribunal as these cases are regarded as precedent setting for subsequent mergers.

1.42. In the Momentum/ African Life Health merger, the Tribunal noted that the administrators compete for beneficiaries for the medical schemes they administer.<sup>38</sup> *“Just as Discovery Health competes for customers to join its medical aid scheme, so other medical aid administrators compete to get customers away from schemes administered by their rivals, to join their own. Administrators assist medical schemes to win customers, and Discovery Health has in fact been able to win customers to its own schemes in this way. ... Since individual beneficiaries, or the collective in a restricted scheme, are free to change administrators, and the quality of an administrators is what makes a scheme an attractive*

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<sup>38</sup> Momentum Group Limited/ African Life Health (Pty) Ltd [2005] (Case No 87/LM/Sep05), para 22, p 7.

*one in the case of an open scheme, Discovery Medical Aid's members are part of a contestable market*".<sup>39</sup>

1.43. In the Momentum/ Metropolitan merger, the Tribunal noted that medical schemes have switched from being third party administered to being self-administered. In this merger, "*the merging parties submitted that significant switching has occurred in the market from third party administration to self-administration by schemes such as Medshield, Pro Sano Medical Scheme, Genesis Medical Scheme and Selfmed Medical Scheme*".<sup>40</sup> Conversely, Impala Medical Plan and Naspers Medical Fund have moved from self-administration to third-party administration.<sup>41,42</sup>

1.44. The Tribunal defined the administrator market broadly, inclusive of both third party and self-administered medical schemes.

### **Views expressed in stakeholders' submissions**

1.45. To determine the types of services administrators' provide to open and restricted medical schemes and to determine if self and third-party administrators compete in the same market, the HMI considered the views of the stakeholders.

1.46. Discovery Health's submission states that third party administrators compete to provide administration services for both open and restricted medical schemes. While there is overlap in the types of services that administrators provide to open and restricted medical schemes, Discovery Health identified three differences. Firstly, most restricted medical schemes require limited marketing and distribution services. Secondly, payroll administration is often simpler for restricted medical schemes compared to open medical scheme. Thirdly, open medical schemes typically have greater challenges related to claims and fraud risk management than do restricted schemes.<sup>43</sup>

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<sup>39</sup> Momentum Group Limited/ African Life Health (Pty) Ltd [2005] (Case No 87/LM/Sep05), para 21 & 22, p 6 & 7.

<sup>40</sup> Metropolitan Holdings Limited/Momentum Group Limited [2010] (Case No. 41/LM/Jul10) paragraph 23, p 7.

<sup>41</sup> See Discovery Health. 17 November 2014, First Submission, para 503, p 186.

<sup>42</sup> The HMI analysis on Barriers to Entry and Expansion will consider barriers that third party administrators and self-administrated medical schemes face when switching between the two.

<sup>43</sup> See Discovery Health Submission 17 November 2014 p 180-181.

- 1.47. Fedhealth indicated that it could choose not to outsource its administration but to self-administer.<sup>44</sup> This suggests that medical schemes can switch between third-party administration and self-administration.
- 1.48. Bestmed noted in its submission that third-party administrators can offer reward/loyalty programs to attract and sustain membership. This is in contrast to self-administered schemes, which are restricted by the MSA from offering such programs. This results in an uneven playing field between medical schemes that are administered by a third-party and those that are self-administered.<sup>45</sup> This suggests that Bestmed considers third-party administrators to be its competitors in the market, as both compete for members.

### ***Conclusion on product market***

- 1.49. While there are some differences in the services that administrators provide to their open and restricted medical scheme clients, there are clear overlaps in administration activities provided to open and restricted medical schemes. In addition, there are similarities between self-administered medical schemes and third party administrators.
- 1.50. The Tribunal noted that administrators play an important role in attracting beneficiaries. In addition, it found that medical schemes have switched from being third party administered to self-administration. The MSA also includes self-administered medical schemes in the administrator definition.
- 1.51. Therefore, the HMI defines the market for medical scheme administration, inclusive of third party and self-administration.

### ***Geographic market***

- 1.52. The administration business is typically a service business which relies on a sophisticated IT platform to process claims. In addition, a call centre that provides customer service is vital to the administration business. Given the nature of the business, administrators are not limited geographically to providing services to their medical scheme clients.

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<sup>44</sup> See Fedhealth, 31 October 2015, First Submission, p 7.

<sup>45</sup> See Bestmed, 01 March 2016, Submission for public hearing, p 3.

1.53. In the Momentum and Bonheur 94 General Trading merger, the Tribunal found that the market for medical aid administration services is national.<sup>46</sup> The Tribunal adopted this definition in the Momentum and African Life<sup>47</sup> and Momentum and Metropolitan mergers respectively.<sup>48</sup>

1.54. Taking the above into account, the HMI defines the geographic market for administration services as national.

## **MANAGED CARE ORGANISATIONS**

### **Product market**

1.55. MCOs provide clinical and financial risk management solutions to medical schemes. They facilitate appropriate care within the constraints of what the medical scheme can afford.<sup>49</sup> The medical scheme may decide to conduct these clinical and financial risk management solutions in-house or contract to a third-party administrator and/or MCO. The CMS classifies managed care service into seven (7) categories.<sup>50</sup>

1.55.1. *Hospital benefit management services*: these services aim to identify, track and optimise benefits within a hospital setting or in the management of high risk/ cost events. Management of hospital benefits may include one or more of the following:

- i) Pre-authorisation services, which is a method of monitoring and controlling utilisation by evaluating the clinical appropriateness of a proposed medical service prior to it being performed by taking into account a number of factors (i.e. scheme rules, managed health funding guidelines or negotiated rates and best clinical practice, etc.);
- ii) Case management, which entails the monitoring and co-ordination of medical services rendered to patients while in hospital with a specific diagnosis or requiring high-cost or extensive services; and

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<sup>46</sup> Momentum Group Limited/ Bonheur 94 General Trading (Pty) Ltd [2004] (Case No 84/LM/Oct04), para 12, p3.

<sup>47</sup> Momentum Group Limited/ African Life Health (Pty) Ltd [2005] (Case No 87/LM/Sep05), para 10, p 3.

<sup>48</sup> Metropolitan Holdings Limited/Momentum Group Limited [2010] (Case No. 41/LM/Jul10), para 21, p 7.

<sup>49</sup> CMS News. Issue 3 of 2009-2010, Relationships in the industry-what all beneficiaries need to know, p 7.

<sup>50</sup> CMS, Circular 13 of 2014: Managed care Accreditation- Final Managed Health care Services Document, p 4- 11.

- iii) *Clinical audits*, these are the methods by which health care provider claims are settled prior to reimbursement. Claim adjudication takes into account a number of factors such as scheme rules and exclusions, possible abuse and waste, clinical appropriateness and accuracy of coding, and financial accountability, among others.
- 1.55.2. *Pharmacy benefit management services*: these services aim to ensure that medicine benefits of a scheme are managed according to clinical appropriateness, cost-effectiveness and affordability.
- 1.55.3. *Active disease risk management services*: this refers to a co-ordinated system where health care interventions are aimed at chronic diseases with the emphasis placed on the prevention of exacerbations and/or complications utilising evidence based protocols and formularies. For management of these diseases the managed care provider may require a member of a scheme to register on a disease management programme, educate the individual member and report clinical information in determining the quality of care and outcomes achieved.
- 1.55.4. *Diseases risk management support services*: where the full disease management programme is not actively followed for a specific disease, a managed care provider may make use of support services. These include pathology, radiology, medication, and consultations.
- 1.55.5. *Dental benefit management services*: this entails the management of medical costs for schemes with respect to basic dentistry and specialised dentistry procedures undergone by scheme beneficiaries.
- 1.55.6. *Managed care network services and risk management*: once providers are included in a network, they agree to follow a scheme's and/or managed care organisation's rules and protocols without compromising the patient's best interest or the quality of care. A network may consist of one or more of the following: general practitioner network, specialist network, hospital network, pharmacy network and dental network.
- 1.55.7. *Health care services (risk transfer)*: this entails the provision of health care services to members within a capitation environment, which includes out-of-hospital and in-hospital services (limited as per the scheme's benefit rules).

1.56. The HMI will consider whether there is a broad market for managed care or smaller specialised markets. The HMI will also consider the role of administrators who also provide managed care services.

### ***Characteristics of the product***

1.57. MCOs offer basic hospital benefit management such as pre-authorisation and case management, as well as various specialised managed healthcare services. Examples of some these specialised services are listed below.

1.57.1. Centre for Diabetes and Endocrinology provides managed care for persons with diabetes in South Africa.<sup>51</sup>

1.57.2. Mediscor PBM (Mediscor) is a specialist pharmaceutical benefit management organisation which provides management of medicine benefits.<sup>52</sup>

1.57.3. Medical Services Organisation (MSO) provides hospital benefit, disease management, medical assistance, cost containment, direct billing and provider network management.<sup>53</sup>

1.57.4. Icon is an independent clinical oncology network which offers a progressive approach to cancer treatment that combines population risk management with individualised care.<sup>54</sup>

1.58. From a demand side, each service programme is designed to address the specific needs of a member. MCOs will employ different healthcare techniques depending on the type of service they offer. As a result, the different specialised services are not substitutable with each other. Therefore, MCOs do not compete in the broad managed care market, but rather in the distinct specialised markets. For example, Mediscor competes against Medikredit Integrated Healthcare Solutions (Pty) Ltd (Medikredit) in the pharmaceutical benefit management services market.<sup>55</sup> Universal Healthcare Services (Pty) Ltd (Universal Health) is an

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<sup>51</sup> <http://web.cdediabetes.co.za/about-cde/our-history>.

<sup>52</sup> <http://www.mediscor.net/aboutus.html>.

<sup>53</sup> <http://www.mso.co.za/home>.

<sup>54</sup> <http://iconsa.co.za/about-icon/>.

<sup>55</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 302.

administrator and there is a shareholding between the owners of Universal and the owners of Medikredit.<sup>56</sup>

- 1.59. From a supply side, Mediscor focuses on processing large volumes of claims for pharmaceutical products on a daily basis. This differs from other MCOs who focus on, for example, hospital, dentistry and disease risk management and who do not process claims in real time. Although these MCOs may have the IT to develop systems that would apply the level of clinical rules and to convert and customise databases to what is applicable in the medicine space, it would still take significant investment and time.<sup>57</sup> Furthermore, expansion within the pharmaceutical benefit management market is somewhat limited by the extent to which large administrators bundle their managed care services.
- 1.60. There is limited demand and supply side substitutability within the broad managed care market. Competition occurs within the narrower markets where MCOs provide similar services to medical schemes.

### ***Competition between administrators and managed care organisations***

- 1.61. Almost all administrators have expanded their service offering to include managed care services, thereby providing medical schemes with an integrated service that consists of both administration and managed care services. Medical schemes can contract with the administrator for a full bundle of administration and managed care services, or they can outsource with separate MCOs for particular services. The HMI recognises that in some instances the activities of administrators and MCOs overlap and will consider these dynamics.

### ***Key provisions of the Medical Schemes Act***

- 1.62. Companies require accreditation from the CMS in order to provide managed care services. Part B, Section 15 of the MSA sets out the provisions for MCOs, which includes the prerequisites for managed health, accreditation requirements and standards for managed healthcare care. Administrators may also be accredited as MCOs, thus providing both administration and managed care services to medical schemes. It is important to note that

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<sup>56</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 285.

<sup>57</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 293.

administrators providing managed care services must also be accredited as MCOs even if the administrator and MCO is the same entity.<sup>58</sup>

- 1.63. All except one administrator (Prime Med Administrators (Pty) Ltd) are accredited to provide both administration and managed care services. However, there are 27 MCOs that are only accredited for managed care and do not provide administration services.

### **Review of previous Competition Commission and Tribunal Cases**

- 1.64. The Commission reviewed four mergers and acquisitions between the periods 2012 to 2013: one large merger and three intermediate mergers. The Tribunal heard the large merger between Metropolitan and Momentum.

- 1.65. In the Metropolitan and Momentum merger, the Tribunal recognised that “*administrators have grown their product offerings to medical schemes to a range of back office managed care services over and above administration services as well as actual medical service delivery, for example pre-authorisation services, hospital case management, disease management programmes (usually for chronic conditions) and capitation arrangements (these can involve for example primary care, specialist services and hospital based services.)*”. Further, the Tribunal recognised that “*managed care service providers either offer a package of comprehensive and integrated clinical risk management services to the members within a medical scheme or they specialise in one or more areas of risk management*”.<sup>59</sup>

### **Views expressed by stakeholders**

- 1.66. MCOs and administrators may compete in a specialised market where the administrator also provides managed care services. For example, Mediscor offers pharmaceutical benefit management services and competes against Discovery Health, Medscheme and Metropolitan.<sup>60</sup> MSO provides basic administration services such as pre-authorisation and hospital claims negotiation to its clients, thus competing with administrators that also provide this service.<sup>61</sup>

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<sup>58</sup> CMS, Accreditation standards for managed care organisations, p 1.

<http://www.medicalschemes.com/files/Guidelines%20and%20Manuals/Standard%20doc%20managed%20care%20final%2022%20Oct%2003.pdf>.

<sup>59</sup> Metropolitan Holdings Limited/Momentum Group Limited [2010] (Case No. 41/LM/Jul10) para 25, p 8.

<sup>60</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 286.

<sup>61</sup> <http://www.mso.co.za/>.

- 1.67. Medical schemes are not required to contract with the administrator or MCO for the full range of administration and managed care services. For example, Medscheme provides different services to their medical scheme clients. Medscheme provides Medshield with chronic benefit management, SAMWUMED with hospital benefit and Bonitas with almost a full range of services.<sup>62</sup> GEMS contracts with Metropolitan and Medscheme for its administration and managed care services and also contracts with Medikredit for its pharmaceutical benefit management services.<sup>63</sup>
- 1.68. On the other hand, DHMS contracts with Discovery Health for the entire basket of administration and managed care services.<sup>64</sup> Bankmed stated in the public hearings that the decision to contract with the new administrator Discovery Health was influenced by the need to have a one stop shop (inclusive of both administration and managed care services).<sup>65</sup> However, Bankmed also noted that there are some service providers that are experts in their fields and the medical scheme would contract separately with those providers. Therefore, the medical scheme contracted with an administrator that provides an integrated service, as well as standalone service providers.
- 1.69. There have also been instances where medical schemes have switched their business from MCOs to administrators who provide the MCO service. According to Mediscor, there have been cases where medical schemes contracted with one of the big administrators to provide administration services. The medical scheme then cancelled all of the other managed care contracts with the independent parties and contracted with the administrator to provide these services.<sup>66</sup> For example, Mulkor Medical Scheme and Naspers Medical Fund cancelled their contracts with Mediscor when they moved to Discovery Health.<sup>67</sup> According to Mediscor there have been rare instances where Mediscor has been appointed to deliver pharmaceutical benefit management services even though the administrator also offered the same service. Currently they do not have these medical schemes among their client base.<sup>68</sup>

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<sup>62</sup> Transcript from Public Hearing held at Olive Convention Centre, Durban KwaZulu Natal , 17 May 2016, Medscheme, p 512.

<sup>63</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 299.

<sup>64</sup> See Discovery Health Submission p 180

<sup>65</sup> Transcript from Public Hearing held at Olive Convention Centre, Durban KwaZulu Natal , 17 May 2016, Bankmed, p 282.

<sup>66</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 240- 241.

<sup>67</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 241.

<sup>68</sup> Transcript from Public Hearing held at HMI offices in Pretoria, 05 May 2016, Mediscor, p 277.

1.70. Medscheme indicated that their administration and managed care businesses are built around separate processes. The administration business registers members, processes claims and deals with member queries. There is a separate department that deals with hospital authorisations, case management and disease management.<sup>69</sup> However, there are some managed care functions that can be done within the health administration environment. For example, if a member queries a claim and requires hospital pre-authorisation, Medscheme can utilise non-clinical agents that are able to provide the authorisation.<sup>70</sup> However, Medscheme deals with medical scheme clients differently, for example, Bonitas has a managed care unit with its administration business.<sup>71</sup>

1.71. From the perspective of stakeholders, there appears to be an overlap between the services administrators and MCOs perform. Medical schemes can contract with medical scheme administrators for the full or partial range of managed care services. There have been instances where medical schemes have switched their managed care services away from an independent MCO to an administrator. Thus, the administrators that offer managed care services compete in some instances directly with MCOs.

### ***Conclusion on product market***

1.72. The HMI recognises that within the broad MCO market, there are specialised services that are specific to the needs of a member. The MCOs offering these services will only compete with other firms offering the same specialist type of services and not with the MCO market as a whole. For the purpose of the inquiry, it is not necessary to define each service separately as independent markets, but the HMI will consider the dynamics within the broad and narrow managed care markets where relevant.

1.73. The HMI has separated administration and managed care services for the purpose of defining the markets, but recognises that the two are often interrelated and will consider this during the analysis.

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<sup>69</sup> Transcript from Public Hearing held at Olive Convention Centre, Durban KwaZulu Natal , 17 May 2016, Medscheme, p 550.

<sup>70</sup> Transcript from Public Hearing held at Olive Convention Centre, Durban KwaZulu Natal , 17 May 2016, Medscheme, p 552.

<sup>71</sup> Transcript from Public Hearing held at Olive Convention Centre, Durban KwaZulu Natal , 17 May 2016, Medscheme, p 551.

### ***Geographic market***

- 1.74. The managed care business, like the administrator business, is typically a service business. Given the nature of the business, MCOs are not limited geographically to providing services to their medical scheme clients. In the Momentum/Metropolitan merger, the Commission defined a national market for the provision of managed care services to medical schemes.<sup>72</sup>
- 1.75. The HMI defines a national market for the managed care service

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<sup>72</sup> Metropolitan Holdings Limited/Momentum Group Limited [2010] (Case No. 41/LM/Jul10) paragraph 25, p 8.