

**PRESS STATEMENT**  
**16 APRIL 2014**

**Commission outlines the guidelines and statement of issues for the Private Healthcare inquiry**

On the back of the Private Healthcare inquiry panel members' announcement on 30 January 2014, the Competition Commission through the presiding chairman of the Private Healthcare Inquiry, former Chief Justice Sandile Ngcobo today; 16 April 2014 took the time to address stakeholders on the administrative guidelines, administrative timetable, and statement of issues for the health market inquiry.

The Competition Act, 1998 defines a market inquiry as "a formal inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm." Market inquiries are "research projects conducted to gain in-depth understanding of how sectors, markets, or market practices are working." The purpose of the exercise is to determine whether the process of competition is working well or can be improved effectively in a market as a whole. They provide a framework for identifying, analyzing and, where appropriate, remedying sector-wide or market-wide competition problems. To this end, the health inquiry will therefore probe the private healthcare sector holistically to determine the factors that restrict, prevent or distort competition and underlie increases in private healthcare prices and expenditure in South Africa.

'The inquiry panel members shall gather evidence and insights into private healthcare through public hearings, review of secondary material, information requests, consultations and summons, as required. The success of the inquiry is inextricably linked to the open and transparent airing of views and information.' says former Chief Justice Sandile Ngcobo.

According to the provisions of section 43C (3) of the Competition Act information obtained during a market inquiry may be used to initiate a complaint under Part C of Chapter 5. The decision whether any information obtained during a market inquiry will be used in a subsequent enforcement investigation lies with the Commission. Should enforcement be deemed necessary this action will then be evaluated on its merits within the bounds of the Competition Act, however the usual provision of the Commission's Corporate Leniency Policy continues to be available to all participants in the inquiry during the course of the inquiry.

With regards to the Statement of Issues, the Commission's terms of reference circumscribe the work of the inquiry panel and the areas that will be probed during the inquiry. The panel's work will have regard to the boundaries of the Terms of Reference, but the panel takes the view that its primary objective is to work within the very purpose of the Competition Act which is to promote and maintain competition in the Republic of South Africa. To this end, in order to assist those who will be submitting information to focus on the issues that will be relevant to the inquiry; we will publish a statement of

issues. The issues set out in the statement are intended to be topics for investigation and do not represent any views or findings of the panel. For this reason, the statement of issues shall be published on various communications tools prompting stakeholders to offer additional issues for the panels' consideration.

Additionally, in order for the market inquiry to make determinations, it has developed a set of ideas or hypothesis about how harmful competitive effects might arise in the relevant markets under consideration. These ideas are generally referred to as "theories of harm".

'It is important to emphasise that these theories of harm are simply hypotheses, or tools, that will enable us to identify whether there are features or a combination of features that may prevent, distort, or restrict competition in the private healthcare markets. Theories of harm are not findings of harm; but are simply analytical tools to guide our analysis. They will be deepened and revised as the inquiry's thinking develops,' adds former Chief Judge Ngcobo.

It is generally recognized that harm to the competition can flow from at least the following sources:

- I. Market power including market concentration;
- II. Barriers to entry and expansion;
- III. Imperfect information;
- IV. Regulatory framework; and
- V. Vertical relationships.

'Stakeholders are also then invited to make further comments on the following Theories of Harm,' says former Chief Judge Ngcobo.

The inquiry is set to follow a very precise and tight administrative timetable which is mindful of the timelines for gathering information including an invitation for written submissions, public hearings, site visits, seminars, and workshops and conducting surveys. Broadly, key milestones will include the issuing of information requests no later than **01 August 2014**. The first round of public hearings will take place **between 01 March 2015 to 30 April 2015** then from **May 2015**, the inquiry will analyse and review the information gathered. Presently, the panel aims to make provisional findings and recommendations available for public comment in **October 2015**.

'In conclusion, as the panel members we commit to a fair and transparent engagement, we also request that stakeholders cooperate with this inquiry constructively and responsibly. This inquiry will be conducted in the interest of promoting and maintaining competition in the private healthcare sector. The attainment of this objective is not only in the interest of consumers and patients, it is also in the interest of society at large – innovation, vibrancy, efficiency and improved quality are all potential outcomes of a more competitive market and this is in the interest of all South Africans,' Judge Ngcobo concludes.

**Ends**

**For more information contact:**

Themba Mathebula, External Communications Coordinator  
012 394 3325/ 0848960860/ [thembama@compcom.co.za](mailto:thembama@compcom.co.za)

**OR**

Keitumetse Letebele, HOD: Communications  
012 394 3183/ 082 783 397/ [keitumetsel@compcom.co.za](mailto:keitumetsel@compcom.co.za)