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CompetitionNEWS

Towards a fair and efficient economy for all

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Minister talks tough and welcomes healthcare inquiry

In his keynote address at the 6th Annual Conference on Competition Law, Economics and Policy, Dr Aaron Motsoaledi, Minister of Health, welcomed the Competition Commission's decision to undertake a market inquiry into the private healthcare sector amidst concerns about pricing, costs and the state of competition and innovation in the sector.

The minister emphasised that quality healthcare must be accessible to all citizens. He said that health is a public service and not just a commercial commodity to be left to market forces. "We welcome the Competition Commission's announcement that it intends to examine in greater detail the private healthcare market in South Africa."

"Prices have escalated to uncontrollable levels, and due to the absence of regulation, it may not be dramatic or an over exaggeration to describe the situation as the law of the jungle, where the principle is survival of the fittest," lamented the minister.

The minister highlighted two interesting facts about the South African situation. Firstly, that even though the country is spending more money on healthcare, the outcomes worsen. Secondly, the World Health Organisation (WHO) recommended that to achieve better health outcomes, countries must spend at least 5% of their GDP on health. South Africa has far exceeded the recommended amount, and currently spends around 8.5% of GDP.

From left: Commissioner Shan Ramburuth; Manager: Advocacy and Stakeholder Relations, Trudi Makhaya; and Professor Jonathan Klaaren: Wits School of Law, welcoming Minister Aaron Motsoaledi at the conference

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EDITORIAL NOTE

The Competition Commission hosted the 6th Annual Conference on Competition Law, Economics and Policy, on 6 & 7 September 2012, at Wits University. The conference attracted hundreds of delegates from different fields including economists, academics, lawyers and government officials.

The conference focused mainly on the state of healthcare in South Africa and the competition aspects in the sector.

Other topics covered at the conference looked at, enforcement, penalties and settlements for cartels in South Africa and conditions attached to mergers.

Dr Aaron Motsoaledi, Minister of Health delivered a keynote address on the second day of the conference. The minister used the platform to talk tough on the seemingly high costs of private healthcare and to welcome the Commission's impeding inquiry into the market.

More than 25 papers were presented on a variety of topics, including a few presentations

Minister talks tough and welcomes healthcare inquiry

(continued)

Among the BRICS countries (Brazil, Russia, India, China, South Africa), only Brazil is ahead of South Africa with regards to health spend. However, shockingly, "all of the four BRICS countries have better health outcomes than us, despite lagging behind in expenditure of health as percentage of GDP," the minister lamented.

The minister mentioned that he is frequently quoted by the media as always blaming private healthcare and accusing them of uncontrolled commercialism. He however stated that "the concept of uncontrolled commercialism is not the concept of Dr Aaron Motsoaledi. It is in the World Health Report released by the WHO in 2008".

The WHO report details three trends that undermine the global improvement of health, and is not directed only at South Africa, but at any part of the world where such trends may be found. According to the minister, South Africa is guilty of all three trends. "We have got hospital centrism with a very strong curative focus, and we think little of Primary Health Care (PHC), which has got a strong preventative and health promotive focus. We still have fragmentation, which we have thought we had done away with after apartheid. And, of course, we have this uncontrolled commercialism which is consuming the healthcare system. The uncontrolled commercialism of healthcare in South Africa is not confined to private healthcare; it is also prevalent in the public healthcare system," he said.

In dealing with these issues and arriving at the truth, the minister promised to tackle the challenges in both the public and private sectors. "The public health sector has got a problem of deteriorating quality of healthcare. This is a very sore point in our country. I am working around the clock to deal with this issue, and no stone will be left unturned. Part of the reason for this deteriorating quality of healthcare is often a lack of basic essentials which no healthcare system can do without."

According to the minister, this lack of basic essentials has been caused, in part, by uncontrolled commercialism, whereupon some individuals within the public healthcare system insidiously replaced the healthcare system with a 'tendercare' system, whereby tenders come first and healthcare last. "As South Africans we are going to have to face this problem head-on," he confirms.

The minister said that the department has identified five main cost drivers in the public health sector, namely compensation of employees; pharmaceuticals; National Health Laboratory Services (NHLS); blood and blood products; and equipment and devices. Except for the compensation of employees and blood and blood products, the remaining cost drivers are motivated by uncontrolled commercialism. The minister questions commercialism in the private health sector, saying: "Each time I opened my mouth to complain about the ever-escalating costs in private healthcare, I am immediately and rudely reminded that the only problem in this country is the poor quality in public health and that there is nothing wrong with private health because they provide superior quality. Yes, I will accept upfront again and again, that the public health sector is riddled by problems of deteriorating quality. But I have a question to ask. How does that automatically translate into uncontrollable, ever-escalating private healthcare which by now has reached dizzying heights?"

The minister said he was being targeted because he relentlessly places this problem in the public arena. According to him, every time the issue of National Health Insurance (NHI) is up for discussion, someone compares public and private healthcare. "I have mentioned many times and I want to mention it again today, that NHI is not a beauty contest between private and public health, but rather a novel way to look for solutions," he emphasises.

The minister cited a 2009 report, *Public Inquiry, Access to Health Care Services*, compiled by Judge Jody Kollapen when he was still Chairperson of the Human Rights Commission (HRC). The HRC conducted this inquiry to find out whether the healthcare sector respects Section 27 of the Bill of Rights, as the Bill unequivocally defines health as a right.

The report found that costs within the private sector increased steadily between 1990 and 1998, and then rose steeply after 1998. This was largely consistent with the period in which the private hospital market was consolidated into three hospital groups, which continue to dominate in terms of buying and building new hospitals. The cost escalation and overprovision is a consequence, in part, of the fact that regulation of the private sector has focused more on medical schemes and less on providers. As a result, the potential for profit,

by staff of the Commission. The papers were presented during the breakaway sessions which ran parallel throughout the conference.

Mr Norman Manoim, Chairperson of the Competition Tribunal opened the conference in a day that saw many presentations, including one by Romeo Kariga and Jabulani Ngobeni from the Commission, and Mfundo Ngobese of Nortons Inc. The paper titled: "Is South Africa a good investment destination? A relook at conditions in merger cases", looked at whether South Africa is a good investment destination in light of recent conditions imposed in merger cases.

The second day focused mostly on competition issues in the health sector. After the minister's keynote address, Thando Vilakazi and Yu-Fang Wen presented a paper on the role of competition law in healthcare markets. The authors found clear evidence that the South African healthcare market is not operating efficiently.

In this edition we highlight some of the presentations.

rather than patients' need appears to have been the deciding factor in the expansion of private sector facilities. Overprovision is also found in the fact that some of South Africa's private hospitals are better resourced with equipment than some hospitals in developed countries.

High costs appear to have been fuelled by unethical practices in which private hospitals overcharge on surgical supplies and materials. In July 2007 accusations were levelled by the Board of Healthcare Funders and supported by the country's biggest medical aid provider, Discovery, suggesting that inflation on items such as drip sets, gloves, syringes and suture materials were costing medical aid companies about R2 billion per year.

The National Department of Health (NDOH) published (non-binding) regulations requiring all private healthcare providers to submit details of their costs. The rapid increase in private sector costs resulted in a dwindling number of people with access private healthcare and a consequent increased burden on the public sector. Medical aid coverage decreased from 14.9% to 14% between 2004 and 2005.

Aware of the challenges, the NDOH has various measures in place to try and contain the negative impact of the private sector on the healthcare system as a whole. Measures include the amendment of the Medical Schemes Act, the Health Charter and proposals regarding the NHI.

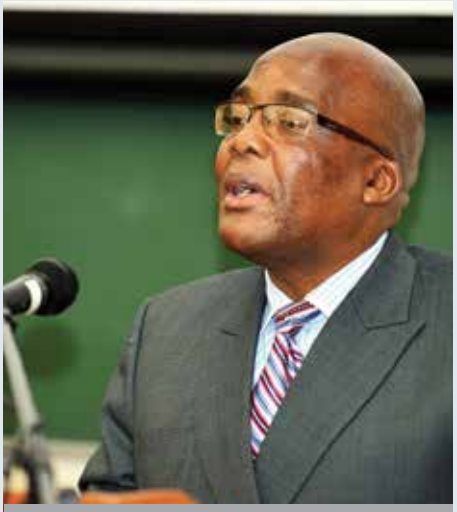
Medicine pricing regulations has resulted in a 15–20% reduction in the cost of medicine prices at the factory, and there is good evidence to support increased volumes of drugs purchased in the private sector resulting from lower prices. However, regulation of the private sector has proved to be challenging, and the NDOH has encountered fierce resistance from some private sector stakeholders to their efforts to reduce inequities between the private and public sectors.

In a report to the Portfolio Committee on Health of Parliament, on 27 July 2011, the Council for Medical Schemes states that hospital costs are the key cost drivers and like the Human Rights Commission they site market concentration as a problem.

The minister noted that "in the same report they produced a graph which shows that the cost has risen sharply from 1998, corroborating the findings of the HRC".

According to the minster, the Council for Medical Schemes report argues that if healthcare is defined as a market, it does not meet the requirements for normal competition. "The report says that the first requirement for normal competition is that there should be no barriers to enter or exit the market. But in health, hospitals require large amounts of capital or skills. It takes many years to train a healthcare professional. There are many regulatory interventions in training, registration, practice standards, etc."

The second requirement for normal competition is perfect information. "But the demand for healthcare is a derived demand – arising from the demand for health. The public has



Dr Aaron Motsoaledi, Minister of Health

no knowledge of what is required to treat an ailment; it is the healthcare professional that has such knowledge."

The third requirement for normal competition is zero transaction costs. As the minster indicated, "the cost of choosing a different hospital is huge. This becomes difficult when someone is not well".

The fourth requirement for normal competition, the report states, is homogeneous products. But healthcare, due to its very nature, has to be customised to meet the patient's needs. "It is very clear that in the present scenario in South Africa there is one and only one loser at all times – it is the patient," the minister states.

The minister hopes that the proposed market inquiry will provide a better understanding of the market, through an independent, expert assessment of the root causes of the problems in the sector. "We need to understand whether and how these problems are related to competitive distortions in the market," he concludes.

6th Annual Conference on Competition Law, Economics and Policy a huge success

The 6th Annual Conference on Competition Law, Economics and Policy, took place on 6 and 7 September 2012 at Wits University. The conference attracted hundreds of delegates from different sectors, including economists, academics, lawyers and government officials.

The event focused mainly on the state of healthcare in South Africa and the competition aspects in this sector. Other topics covered at the conference included enforcements, penalties and settlements for cartels in South Africa and the conditions set in merger cases.

The Minister of Health, Dr Aaron Motsoaledi, was the keynote speaker at the event and discussed the concept of commercialism in the private healthcare sector. During the course of the conference, more than 25 papers were presented on a variety of topics, including a few presentations by Commission employees. The papers and speeches presented during the conference can be accessed on http://www.compcom.co.za/sixth-annual-competition-conference/

Commissioner Shan Ramburuth

Competition Tribunal Chairperson, Norman Manoim

Deputy Commissioner, Tembinkosi Bonakele

Trudi Makhaya, Manager, Advocacy and Stakeholder Relations: Commission

Dr Simon Roberts, Chief Economist and Manager, Policy and Research: Commission

Hardin Ratshisusu, Technical Advisor: Commission

The conference included an evening cocktail event, allowing delegates to exchange ideas on issues of interest

Reena das Nair, Principal Economist: Commission, and Prof. Kasturi Moodaliyar, Senior Lecturer: Competition law, Wits Law School

Oliver Josie, Manager, Cartels: Commission, addressing one of the breakaway sessions

Sipho Mtombeni, Senior Analyst: Commission

Gilbert Muzata, Principal Economist: Commission

Conference participants engaging during conference intervals

South Africa: a good investment destination?

During the 6th Annual Conference on Competition Law, Economics and Policy, two Competition Commission staff members, Romeo Kariga and Jabulani Ngobeni, presented a paper in their personal capacity and in collaboration with Mfundo Ngobese, Senior Associate at Nortons Incorporated. The paper investigated whether South Africa is a good investment destination in light of the recent conditions imposed in merger cases. The paper explores the powers within which competition authorities should operate in imposing conditions in merger cases, and the possible impact of merger conditions on investment in the country.

The paper concludes that there has been increased interest in public interest issues in South Africa since 2010, with civil society, government, and competition authorities all seeking to implement public interest issues for various reasons. The paper points out the need for the Commission to engage more with merging parties and other stakeholders to come up with solutions that address competition or public interest concerns so that conditions imposed on mergers involving foreign firms are not perceived as resistance to foreign investments.

Summary of the paper

The Commission and the Competition Tribunal are empowered to impose conditions in merger cases to address competition or public interest concerns that they identify. Of late, the conditions imposed or recommended by the Commission have been vigorously challenged by the Tribunal.

With the economic downturn in 2008, the Commission and the Tribunal have increased their focus on public interest concerns. This increased focus has given rise to a variety of conditions. One may argue that some of the conditions may not be in line with the role of the competition authorities in attaching conditions to their decisions.

Arguably, some merging parties may have had stricter conditions imposed on them than was necessary to address competition or public interest concerns. Some of the conditions may not be merger specific. As seen in the recent Wal-mart/Massmart decisions, the conditions imposed in merger cases are sometimes used, rightly or wrongly, to measure the friendliness of South Africa as an investment destination. With such a great influence on the market, merger conditions have to be imposed after careful analysis of the dynamics of a market while taking cognisance of the existing legal framework.

The Commission receives extensive media coverage and the media tends to shape the thinking of the nation and potential investors. What is clear is that with all the publicity the Commission receives, merger conditions are sometimes used as a platform for fuelling perceptions that influence investor decisions.

For instance, in the Wal-mart/Massmart merger, the merger conditions and government involvement was used by the media to measure the friendliness of South Africa as an investment destination. It is therefore prudent for competition authorities and government to critically look at the possible perceptions that may be created by certain conditions imposed in mergers.

The Tribunal recognised the possible effects that merger conditions, particularly public interest issues, may have on investments when it stated that: "The role played by the competition authorities in defending even these aspects of public interest listed in the Act is, at most, secondary to other statutory and regulatory instruments – in this case the Employment Equity Act, the Skills Development Act and the Charter itself spring to mind. The competition authorities, however well intentioned, are well advised not to pursue their public interest mandate in an overzealous manner lest they damage precisely those interests that they ostensibly seek to protect."

The above position was reinforced in the Metropolitan/Momentum decision by the Tribunal. In the same vein, Penelope Hawkins and Keith Lockwood noted that: "A number of new legislation that impacts directly on the business sector have been promulgated in South Africa in recent years.

Since potential foreign investors generally do not feel as secure in investing in South Africa as their local counterparts, 'subjective' elements in such legislation increase the risk associated with investment, and give rise to perception that foreign investors are 'unwelcome' and 'discriminated against'. Reducing the scope of subjective rulings and interpretations in such legislation would reduce the risks faced by foreign investors.

In looking at the Commission's rating, the Global Competition Review noted that two of the 288 mergers filed last year were blocked and that there is an "increasingly adversarial approach to mergers, particularly ones involving foreign entities". The report further states that there is a marked increase in the use of remedies, with 28 mergers cleared with conditions in 2011 compared to 11 in 2010. Some of the Commission's decisions have been labelled as 'bizarre'.

The views of the global competition community clearly express the sentiments summarised in this paper. The issue is one of managing perceptions.

It has to be admitted at the outset that it is difficult to do a quantitative analysis of how merger conditions have impacted on Foreign Direct Investments (FDIs), as they only form

a small subset of the factors affecting FDIs. For such an exercise one would need to take a lot of factors into consideration and then weigh the true impact of merger conditions.

One can legitimately argue that the decrease in FDIs in 2009 and 2010 was a result of the economic crisis. However, other factors may also be at play, including a domestic market structure which is considered to be small and not which is growing fast, and labour market issues. Thus from the time that the Tribunal began placing more emphasis on public interest grounds in 2010, particularly employment, there is not enough data to work with to link FDIs to merger conditions. Though the data is not conclusive, it does not seem like the increase in conditions has resulted in a corresponding decrease in FDIs.

While FDIs interact with industrial policies, one thing that is clear is that investors want certainty in policy. No matter how unfriendly policies are, investors would invest in a country as long as they know what to expect. This applies to merger conditions as well.

Since the Metropolitan/Momentum case in 2010, there has been increased interest in public interest issues in South Africa. Civil society, government and competition authorities all seek to implement public interest issues for various reasons. The paper notes that in the recent Massmart/Wal-Mart case, public interest issues were extensively discussed.

However, one should not lose sight of the ambit within which mergers have to be analysed. It provides a basis for the imposition of conditions or a prohibition and would provide a cushion against bad foreign investor perceptions that may be caused by imposing conditions that are not merger specific or that go beyond the statutory mandate of the competition authorities.

The paper recommends that the Commission engages more with merging parties and other stakeholders to come up with solutions that address competition or public interest concerns. With regards to the Tribunal, the paper believes the authority has to exercise its inquisitorial powers before imposing merger conditions, even when there is agreement between the Commission and merging parties.

The full paper is available on:
http://www.compcom.co.za/sixth-annual-competition-conference/

Public Interest Provisions in Competition Policy

The Competition Act of South Africa is written in a manner that explicitly acknowledges the importance of public interest and therefore provides a mandate for the consideration of factors that go beyond the boundaries of competition. This is reflected in the preamble and purpose of the Competition Act and is stipulated as a consideration in both the assessment of exemptions and mergers.

Willem Boshoff[1], Daryl Dingley[2] and Janine Dingley[3] presented a paper titled *The economics of public interest provisions in the South African Competition Policy* at the 6th Annual Conference on Competition Law.

Summary of the paper

Public interest provisions in South African competition law have long evoked debate among the country's economists and policymakers. During the development of the Competition Act in the late 1990s, the inclusion of these provisions already generated a sometimes heated scholarly debate. Three recent high-profile merger cases in South Africa re-opened the public interest debate: Wal-Mart/Massmart, Kansai/Freeworld and Momentum/Metropolitan.

Jurisdictions elsewhere in the world have also grappled with the challenge of incorporating non-competition objectives (including state aid provisions in the European Union) into competition policy. This paper reviews the public interest issues in the three above-mentioned merger cases, with the aim of studying their economic foundations.

The paper identifies three issues related to the economics of public interest provisions. Firstly, it considers the issue of using public interest provisions as motivation for arbitrary (rather than systematic) interventions in competition cases. The paper likens this issue to broader economic policy uncertainty.

Secondly, the paper considers the relationship between public interest objectives and the welfare standard in South African competition cases.

Thirdly, the paper considers the analytical requirements for investigating public interest issues, including the need for dynamic rather than static analysis as well as the problem of 'merger specificity', especially in relation to job losses.

The paper then analyses how systematic public interest provisions have been in each of the three merger case. Government interventions in competition cases appear to have been arbitrary, and the paper ascribes this to uncertainty in government policymaking and the failures of sector regulating bodies.

The paper then considers the implications of public interest objectives for the welfare standard of competition policy. Based on recent developments elsewhere, it unpacks the welfare standard concept, contrasting it with concepts of surplus. The paper also explores how the public interest provisions relate to the chosen welfare standard by analysing how these provisions change efficiency and re-allocate resources in the economy. In particular, the paper considers conditions relating to employment, local procurement and innovation.

Lastly, the paper looks at the implications of public interest objectives for economic analysis in merger cases. For economics to play any role in the analysis of public interest concerns, the analysis will have to follow a partial equilibrium approach. A Partial equilibrium analysis is preferred in merger analyses, because economists can provide reasonable predictions about the effects of a merger in a particular market. In contrast, the overall effects of a merger beyond a particular market are difficult to model.

If a partial equilibrium analysis is to be the basis for the economics of public interest concerns, analysts will have to be specific about the markets relevant to particular public interest claims. For example, where a merger is said to affect the ability of a particular sector to compete, analysts will have to define the relevant product markets involved.

Of course, one could claim that there are hundreds of such markets. But, in the spirit of partial equilibrium analysis, the paper argues that a value chain approach should be adopted which would limit attention to upstream and downstream markets related to the conventional competition market. This market specificity will also assist with the balancing of competitive and public interest effects, as it would enforce more rigorous analysis of public interest claims.

Furthermore, the paper argues that public interest issues, contrary to what one would expect, are often concerned with efficiency rather than equity. Those provisions that do have strong equity goals – which include small business and promotion of businesses owned by historically disadvantaged individuals – should receive less attention as economics provide tools for the analysis of efficiency.

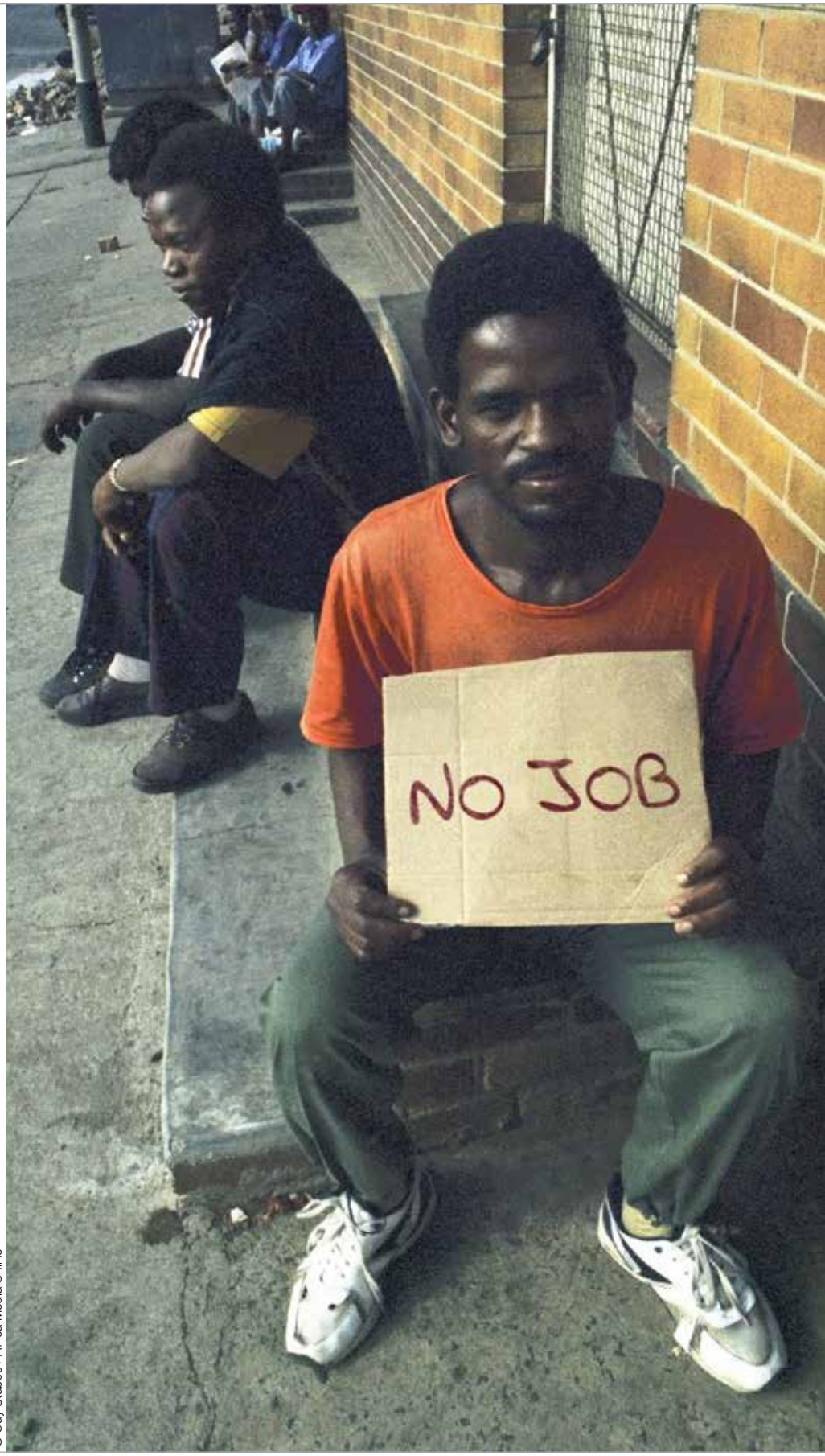
However, the paper also notes that efficiency and equity are often mutually reinforcing. The paper mentions that in most cases the focus will be on producer (or seller) surplus in these markets, which would require an analysis similar to the conventional competition analysis (but with an explicit focus on the seller).

While the analysis of many of the public interest issues is, in principle, no different from that of conventional competition issues, it is also far

more complicated. This is because the various provisions conflict in terms of whether they require static or dynamic analysis. Economics is much better in providing static predictions than dynamic ones, which also suggests why courts have often avoided considering too many dynamic questions. While many have called for competition policy to become more concerned with dynamic analysis, institutional limits and the limits of academic research suggest that adopting a dynamic standard would create legal uncertainty.

The choice between static and dynamic analysis essentially splits public interest provisions in South African competition policy into two: protection of jobs (static) and other public interest provisions (dynamic or static). A focus on dynamism may well undermine the use of the 'job protection' defence.

The full paper is available on: http://www.compcom.co.za/sixth-annual-competition-conference/



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The Role of Competition Law in Healthcare Markets

During the 6th Annual Conference on Competition Law, Commission staff members[1], Thando Vilakazi and Yu-Fang Wen, presented a paper on the role of competition law in healthcare markets. The authors found clear evidence that the South African healthcare market is not operating efficiently. Rising healthcare costs are making private healthcare unaffordable for more and more people. This could put additional strain on the already overburdened public healthcare sector. The paper recommends that the terms of reference for the Competition Commission's impending inquiry into the private healthcare sector needs to be carefully thought through to ensure that it has a meaningful impact on the healthcare market.

Summary of the paper's findings and recommendations

Much has been said recently about the rising costs of healthcare in South Africa and the relationship that this phenomenon may have with competition law interventions in the sector, in particular the decision to abolish collective negotiation in 2004 and the relatively lax stance taken by the authorities towards the trend of 'creeping mergers' in the past decade. Furthermore, there has been a suggestion from some quarters that competition is not working well in the different markets and that this is likely contributing to rising costs.

In this context, this paper seeks to understand the role that competition policy can and should play in healthcare markets. Drawing from international literature, the authors identified the ways in which competition policy can be used to ensure the effective functioning of healthcare markets. They then briefly describe the South African healthcare sector, highlighting some of the competition concerns which have been raised and consider how competition policy can play an effective role in this context. Their findings suggest that the main areas of concern in the South African healthcare market will have to be resolved through both competition law and regulatory interventions.

There is clear evidence that the South African healthcare market is not operating efficiently. Rising healthcare costs are making private healthcare unaffordable for more and more people. This could put additional strain on the already overburdened public healthcare sector. While this market is unique, it is not sufficiently different to justify its exclusion from competition law intervention. Therefore it should be subject to competition scrutiny to protect patients from

potentially harmful, anti-competitive conduct. Regulatory intervention, particularly when it comes to governance concerns, is also necessary to address market imperfections not accommodated through competition policy.

There has been much discussion in the press about a potential Commission market inquiry. PricewaterhouseCoopers (2012) published the results of a survey of 20 South African medical schemes representing 53 percent of the industry. It revealed that 57 percent of the respondents thought a Commission investigation into healthcare costs would be useful and 38 percent thought it was long overdue.

A market inquiry would require input and co-operation from several stakeholders, including the National Department of Health and industry bodies. It could form an initial basis for recommendations on regulatory reform to strengthen competition and governance within the healthcare sector and could lead to the initiation of complaints where concerns would be best tackled through a formal investigation under the Competition Act.

While the focus for the review has not been determined yet, we believe it would need to take a holistic approach. A deeper understanding of the overall interrelationship of all the parties within this market will enable the Commission to determine any areas of anti-competitive practices and where the incentives to charge higher prices lie. At the same time, the inquiry will be most effective if it focusses on areas where competition policy can be brought to bear on the problems contributing to increasing costs. This paper has attempted to draw a clear distinction between those problems in the healthcare market which relate particularly to potential anti-competitive conduct and those which are essentially governance or regulatory problems. A possible healthcare inquiry should focus on the former. Some of the key issues which may be investigated are summarised below.

The major concern in the healthcare market is rising prices. We believe the inquiry should analyse the current pricing regime by considering the implications of past government and Commission decisions. As discussed above, many believe that the abolishment of collective bargaining and the dismissal of the National Reference Health Price List (NHRPL) in the industry have resulted in the price issues in the market. An inquiry should consider if the reference price list is justified and whether it potentially encourages anti-competitive behaviour. It could also look at the current fee-for-service model to determine if it is working or whether it encourages practitioners to 'over service' to increase profit.

An analysis of prices from a competition perspective would need to consider which of the parties has the strongest bargaining power and how this influences the pricing regime. This would mean looking at the bargaining power of medical schemes relative to their administrators and to their service providers. This would help to determine why medical schemes appear to be ineffective at containing costs.

To understand the drivers of competition at the level of medical insurance, one would have to look at how consumers choose medical schemes, and what conditions are required to achieve a more competitive market driven by the purchaser.[2] A purchaser-driven market could put pressure on medical schemes to compete more actively on price.

Competition strengthens when there is an increase in the number of competing firms. An analysis of the overall healthcare market could determine how to make entry into the market easier. While the Commission could be involved in some parts of this, the Department of Health would also have a key role to play. This process could include looking at hospital licencing, options for public-private partnership agreements to build new hospitals, etc. It could also consider how to increase the number of specialists and how to encourage trained practitioners to remain working in South Africa.

It is clear that the competition authorities also have a role to play with respect to the hospital industry. Retrospective studies on the impact on prices and quality of past mergers would provide a good insight into the effects of hospital mergers. These studies will allow the competition authorities to understand whether the approach taken to merger analyses and control up to now has been appropriate and effective, and will inform future interventions.

In addition, it is widely accepted that imperfect information is a major challenge in the healthcare market. The inquiry could also look for ways of increasing transparency in South Africa. If competition in the healthcare market is to be successful, then there needs to be sufficient information available to stimulate competition by facilitating patients' choice, be it on quality or price.

The areas identified above are by no means the only factors to be considered. The Commission can only intervene in matters relating to the conduct of market participants, concentration of the markets, the interaction between the different levels of the industry and ensuring the protection of the consumer who is less informed in this market than traditional markets. Beyond the scope of the Commission's interventions there is a regulatory framework that can be used to address other concerns.

The healthcare market is complex and a full healthcare inquiry will be challenging and time consuming. The terms of reference for the inquiry will need to be carefully thought through to ensure that it has a meaningful impact the healthcare market. The inquiry also cannot be seen as a solution to all of the problems of the healthcare market, but rather the commencement of a process that will require significant co-operation from a wide range of stakeholders.

The full paper is available on: http://www.compcom.co.za/sixth-annual-competition-conference/

[1] Note that this paper reflects the personal views of the authors and does not necessarily reflect the views of the Competition Commission.

[2] Van den Heever, 2012.

Where to get hold of us

Visit the Competition Commission online at www.compcom.co.za for more information about the Commission and the Act. You may also forward enquiries, comments and letters to:

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