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NOTICE TO STAKEHOLDERS

ACCESS TO CONFIDENTIAL INFORMATION HELD BY THE HEALTH MARKET INQUIRY

PROPOSED APPROACH EMANATING FROM STAKEHOLDER MEETING HELD ON

7 FEBRUARY 2017

Dear Stakeholder,

1. Pursuant to the Notice published on 3 February 2017, the Health Market Inquiry (“HMI”) met with stakeholders on 7 February 2017 to discuss their respective attitudes towards granting third party access to their confidential data and information.
2. The HMI would like to extend its gratitude to those stakeholders who attended and participated in the discussion.
3. During the course of the above meeting, various stakeholders expressed their respective views on the issue of access to confidential data and information they have submitted to the HMI.
4. Depending on the nature, type and extent of the data or information to which access is being sought, the following general views emerged from the stakeholders:
 - In certain circumstances, where data is completely anonymised and aggregated, a number of stakeholders indicated they would consider granting access to such data to other stakeholders with a legitimate interest, and where the data is relevant and reasonably required.
 - Some stakeholders indicated that they would be willing to grant access on certain categories of data and to a limited set of stakeholders.
 - Stakeholders were generally reluctant to consider access to any commercially sensitive information that has economic value and specific to their own business or trade. For that reason, some stakeholders expressed the view that

there would be circumstances in which they would want to consider each request on its merit to assess whether or not granting access is appropriate, and if so to what extent.

- Certain stakeholders were, however, agreeable to allowing access to confidential information under a strict data access room regime, subject to confidentiality agreements and certain conditions.
- Stakeholders were largely in agreement that access should only be granted to specified external expert advisors, and that the access regime followed should be clear, fair and flexible.
- One stakeholder expressed the view that, clarity on the HMI's power to grant access to confidential information was necessary, as in their opinion, the HMI is duly authorised to grant access to confidential information, under strict data access room conditions without the need for consent from submitters of confidential information.

5. The HMI has carefully considered the views and inputs of all stakeholders who participated in the 7 February 2017 meeting, as well as those who provided input in writing. The HMI now proposes the approach set out below.

HMI PROPOSED APPROACH TO GRANTING THIRD PARTY ACCESS TO CONFIDENTIAL INFORMATION

6. At the outset, the HMI wishes to reiterate that the current view of the Panel is that the Commission (of which the HMI is part) has no power itself to grant access to information that is the subject of a claim of confidentiality, and which has yet to be finally determined not to be confidential information, in terms of section 45(3) of the Competition Act, 1998.
7. On 18 September 2015 the HMI published "*Supplementary Guideline No.2*" to facilitate and manage a process by which access to confidential information may take place. Access to confidential information will take place with the consent of the submitter; or pursuant to an order of the Tribunal granting access under the Act.
8. The HMI is committed to a fair and flexible process for providing access to data. In relation to each of the three categories discussed below, where access to data is granted such access will be to specified external and independent expert advisors who represent the relevant stakeholders.

8.1 Aggregated Data

- 8.1.1 Aggregated data refers to information collected from multiple sources and/or on multiple measures, variables, or individuals, that has been compiled into data summaries or summary reports, typically for the purposes of statistical analysis. An example of such aggregated data in the HMI's possession is the medical schemes claims data described in the "*Descriptive Statistics Report*."
- 8.1.2 It is further important to note that the HMI acquired only de-identified / anonymised data for its analysis and as such, does not have in its possession any raw data at a patient level. *Patient data* relates to a single patient, such as his/her diagnosis, name, age, address, earlier medical history etc. This data is typically based on a single patient-health care worker interaction.
- 8.1.3 In addition, the HMI has also collected practitioner data, which was de-identified prior to any analyses or specific research being undertaken.
- 8.1.4 Security concerns regarding aggregated data are not as significant as for patient data, as the aggregated data represents a consolidation of patient information, and therefore does not contain any detail at an individualised level. Furthermore, all patient and practitioner information in the possession of the HMI is de-identified to ensure that it cannot be attributed to any specific individual.
- 8.1.5 In light of this, the HMI proposes to grant access to the aggregated data sets which it has used in its analysis and has relied upon in its published reports. The HMI has put in place measures to ensure that risks associated with such data are mitigated.
- 8.1.6 The HMI will evaluate each request for access on its own merits.

8.2 Commercially Sensitive Data & Stakeholder Confidential Information

- 8.2.1 The Competition Act defines confidential information as trade information that belongs to a firm, has economic value and not generally known by others. Possible examples of such could be tariff information, strategic documents and certain financial information. The data and information that is in line with the definition of confidential information, clearly falls outside the ambit of what is contemplated under par. 8.1.

- 8.2.2 Where applicable, stakeholders are to lodge confidentiality claims appropriately as prescribed in the Competition Act.
- 8.2.3 Where such commercially sensitive data or information has been claimed as confidential by the submitter thereof, the HMI will not grant access to such information without the consent of the submitter or an order of the Tribunal granting access to such information.
- 8.2.4 A person seeking access to confidential information, who is refused access by the submitter, or who considers that the consent offered or granted by the submitter is inadequate, will be required to request the Tribunal for an order granting concerning access to such information.
- 8.2.5 The Office of the Inquiry Director will approach submitters to obtain consent to specific data access requests received, subject to appropriate undertakings by the persons concerned and such other arrangements pursuant to *Supplementary Guideline No. 2*.
- 8.2.6 Stakeholders are, however, not precluded from negotiating with or approaching submitters directly. Agreement and co-operation between stakeholders will obviate the need to approach the Tribunal and the attendant delay.
- 8.2.7 Where consent is refused, an application for access may be made to the Tribunal by the stakeholder seeking access. The HMI may itself lodge the application for access or intervene in an application for access in appropriate circumstances. However, this will only be in circumstances where the HMI has a legitimate interest and the access sought has a direct impact on the HMI's analysis and procedure.
- 8.2.8 Stakeholders should therefore not expect that the HMI will in all circumstances make the applications for access to the Tribunal on their behalf.

CONTENT OF REQUESTS FOR DATA

9. It is important that the requests for access be specific and illustrate why data is required.
10. This is essential in preparing the data room and to ensure that access to confidential information is not unreasonably requested or improperly disclosed.

11. Stakeholders are requested to consider the timing of their requests for access to avoid a piecemeal approach in lodging their requests for access. For an example, there may be circumstances where it may be premature to request or obtain access to confidential data and information because the HMI's analysis is still at its preliminary phase.

DATA ACCESS ROOM

12. The HMI will maintain, at its offices, a data access room where confidential information may be accessed by persons having the necessary consent from the submitter or pursuant to the order of the Tribunal.

13. Principles of fairness and justice will guard the access regime. The process is clearly set out in Supplementary Guideline No. 2 mentioned above.

14. As provided for in the Supplementary Guideline No. 2, the procedure, conditions of access and number of expert representatives permitted access will be flexible having regard to particular requests for access.

15. The data access room will be located at the HMI offices at Trevenna Campus, Block 2A, 4th Floor, 70 Meintjie Street, Sunnyside, Pretoria. Tel: (012) 762 6900.

16. The HMI intends to publish on its website a schedule of all requests received for access to confidential information, which will be updated on a continuous basis. The schedule will include the requesting stakeholder's details, nature of the request and status thereof.

REQUEST TO STAKEHOLDERS

17. The HMI requests stakeholders to consider the above proposed approach and respond with any material input in writing to MbuyiseloS@healthinquiry.net or Phenyom@healthinquiry.net by no later 16:00 on 20 February 2017.

Issued on: 14 February 2017

Clint Oellermann

Inquiry Director