



The Competition Commission
The dti Campus, Mulayo (Block C)
77 Meintjies Street
Sunnyside
Pretoria
By Email: health@compcom.co.za
Attention: The Market Inquiry into the Private Healthcare Sector

Dear Sirs

RE: Market Inquiry into the Private Healthcare Sector – Submission on Draft Statement of Issues

The Unlimited Group (Pty) Limited (“**The Unlimited**”) is an authorised financial services provider and holds several category 1 FSP licenses. The Unlimited provides, amongst other things, intermediary services in respect of accident and health as well as health policies underwritten by various short and long-term insurers respectively (collectively “**health insurance policies**”). The Unlimited has read, with interest, the Draft Statement of Issues published by the Competition Commission on 30 May 2014 in relation to the Market Inquiry into the Private Healthcare Sector (the “**DSOI**”).

As the Commission is undoubtedly aware, in 2012 National Treasury published draft regulations under the Long and Short-term Insurance Acts of 1998 (“**the Acts**”) which specified the types of insurance business which will be permissible under the Acts despite meeting the definition of the business of a medical scheme as such term is defined in the Medical Schemes Act, 1998.

Following the receipt of more than 340 submissions on the first draft, a second draft of the Regulations was published by National Treasury on 29 April 2014 (“**the Regulations**”) for public comment. Once the Regulations come into effect (anticipated to be as early as September this year) it will be unlawful for insurers (and their intermediaries) to provide health insurance policies which do the business of a medical scheme unless the product falls within the ambit of one of the permissible

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categories of policy listed in the Regulations. This has clear implications for the right of access to health care in that people who finance their health care by relying on insurance products similar to those offered by The Unlimited will no longer be able to do so. Either they would have to become a member of a medical scheme or, if they cannot afford medical scheme contributions, they would have to rely on the public health system. Taking into account that less than 18% of South Africans are members of medical schemes (see the Terms of Reference for the Inquiry dated 29 November 2013, at 2.1) one can surmise that an already over-burdened State healthcare infrastructure will come under further pressure.

The Regulations will effectively render unlawful one of the ways in which people currently provide for their private health care requirements. The net effect will be that competition in the private healthcare sector will be distorted as only medical schemes will be able to provide certain types of healthcare products, for example those that provide primary healthcare benefits (such as access to GP networks).

The Regulations will result in competition being distorted, ultimately to the detriment of the overwhelming majority of South Africans who cannot afford medical scheme contributions. In this regard, in 2011 less than 9% of black South Africans were covered by medical aid (see Statistics South Africa Report No. 03-00-05 2011 at 21). It accordingly follows that if the Regulations outlaw policies on which many black people depend to access private healthcare, the Regulations would indirectly discriminate against them. Effectively the Regulations will have a disproportionate impact on lower income groups, depriving them of access to private health care. Furthermore, one can reasonably expect job losses in the insurance sector.

Should the Regulations be implemented prior to the Commission completing its inquiry into the private healthcare sector we submit that the inquiry will be moot, at least insofar as it pertains to health insurance policies which would fall outside the ambit of the Regulations (and which would be regulated under the Medical Schemes Act, 1998)

In the Explanatory Memorandum accompanying the Regulations, Treasury state that "*one of the concerns which the draft Demarcation Regulations seek to address relate to **contentions** that certain*

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health insurance products (which provide similar benefits to medical schemes) ... cause harm to the medical schemes environment by attracting younger and generally healthy members out of medical schemes. This practise if left unchecked **could** result in increasing costs for the older and less healthy who remain dependent on medical schemes for their cover ... Health insurance policies (providing similar benefits as medical schemes) **may** result in –

- younger and healthier persons terminating, limiting or reducing their medical scheme cover;
- a negative impact on the life-cycle protection offered by medical schemes; and
- medical schemes reducing benefits". (Our emphasis added.)

It is worthwhile mentioning that no empirical evidence has been provided by Treasury in support of its concerns – it appears that certain assumptions have been made on the basis of imperfect information. It is also worth mentioning that an article that appeared in the online publication Bizcommunity.com on 25 June 2014 notes that "figures released by Stats SA last week showed the medical aid membership has risen from 16.5% of the population to 18.4% in the past two years". (See <http://www.bizcommunity.com/Article/196/357/115266.html#grp=industry>). In our respectful submission the Commission's inquiry into the sector will in fact determine whether health insurance products pose an actual threat to the principles underpinning medical schemes.

In the circumstances we strongly urge the Commission to file a submission on the Regulations and reach out to Treasury to delay their implementation. Furthermore, and taking into account that the DSOI includes an assessment:

1. of whether health insurance products influence consumers' choices; and
2. of the nature of competition among medical schemes and health insurance products, and the corresponding impact on affordability as well as quality of products,

we submit that the implementation of the Regulations may amount to the Commission's findings being anticipated, as contemplated in section 73(2) of the Competition Act.

Furthermore, we respectfully submit that the Commission is responsible, by virtue of the provisions of section 21(1) of the Competition Act, to:

3. "participate in the proceedings of any regulatory authority"; and

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4. "review legislation and public regulations, and report to the Minister concerning any provision that permits uncompetitive behaviour".

The deadline for submissions to Treasury on the Regulations is 7 July 2014 (stdemarcation@treasury.gov.za – attention Miss R. Sheoraj), although extensions to 31 July are being given.

To summarise, we submit that any attempt to implement the Regulations prior to the completion of the Commission's inquiry would be premature. In our opinion the Regulations, if implemented, would distort competition – i.e. **Theory of harm 6**.

We would be happy to discuss any aspect of this correspondence with you, and thank you for the opportunity to make this submission.

Yours Sincerely

Wayne Mann
Head of Legal

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