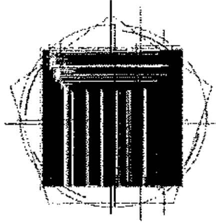

BOUWER CARDONA

• ATTORNEYS • NOTARIES • CONVEYANCERS •

Our Reference: MR BOUWER/N85/161

Your reference:

Date: 30 June 2014

THE INQUIRY DIRECTOR
MARKET INQUIRY INTO PRIVATE HEALTHCARE
THE COMPETITION COMMISSION
PER E-MAIL: health@compcom.co.za

Dear Sirs,

NATIONAL HOSPITAL NETWORK'S ("NHN") SUBMISSION ON THE DRAFT GUIDELINES FOR PARTICIPATION IN THE MARKET INQUIRY INTO THE PRIVATE HEALTHCARE SECTOR AND THE DRAFT STATEMENT OF ISSUES

We refer to the above and advise that we act on behalf of the National Hospital Network ("NHN").

We enclose herewith the NHN submission on the draft guidelines for participation in the market inquiry into the private healthcare sector and the draft statement of issues.

A hard copy of the submission shall be furnished on you by hand delivery in and during the ordinary business week.

Yours faithfully

BOUWER CARDONA INC
Per Trevor Bouwer

59 – 7th Avenue, Parktown North, Johannesburg. P.O. Box 158 Parklands, 2121.
Email: info@bouwer.biz. Tel: (011) 759-0940 Fax: (011) 759-0979. Docex: 604 Johannesburg. Lodgement No. 488

Directors: **T. BOUWER** BA, LLM, H Dip Co, FAArb. **E.C. CARDONA** BA, LLB
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30 June 2014

The Inquiry Director
Market Inquiry into Private Healthcare
The Competition Commission
Per E-Mail: health@compcom.co.za

SUBMISSION ON THE DRAFT GUIDELINES FOR PARTICIPATION IN THE MARKET ENQUIRY INTO THE PRIVATE HEALTHCARE SECTOR AND THE DRAFT STATEMENT OF ISSUES

SUBMITTED ON BEHALF OF THE NATIONAL HOSPITAL NETWORK ("NHN")

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1. INTRODUCTION

1.1 This submission is made in response to the invitation contained in the draft guidelines for participation in the market enquiry into the private healthcare sector and the draft statement of issues of the market enquiry into the private healthcare sector dated 30 May 2014.

Registration No: 2007/005053/08
Association Incorporate under Section 21: Ref No 73-559

Directors: IE Bhorat, A Devchand (Chairman), R du Preez, MFA Habib, Dr HLE König, AP Rossouw, RM Mills, Dr MI Shreef, G van den Berg, OFAK Wypkema (CEO)

Hospitals:
Aurora Hospital
Arwyp Medical Centre
Capital Oncology
Cairnhall Hospital
Ceres Private Hospital
Cormed Hospital
Daymed Private Hospital
eMalahleni Hospital
Ernest Oppenheimer Hospital
Ethekwini Hospital & Heart Centre
Fochville Hospital
Genesis Clinic
Hillcrest Private Hospital
Hibiscus Hospital
Lakeview Hospital
Lenmed Health Daxina Private Hospital
Lenmed Health Zamokuhle Private Hospital
Lenmed Health La Verna Hospital
Lenmed Private Hospital
Lenmed Health Randfontein Private Hospital
Leslie Williams Private Hospital
Louis Pasteur Hospital
Lowveld Hospital
Matatiele Private Hospital
Maseru Private Hospital
Medfem Clinic Pty Ltd
Melomed Bellville
Melomed Gatesville
Melomed Mitchells Plain
Midlands Medical Centre
Midvaal Private Hospital
Mooimed Hospital
Nelspruit Surgiclinic Hospital
Nongoma Private Hospital
Pongola Hospital
Quality Care Private Hospital
Riemland Clinic
Rondebosch Medical Centre
Rustenburg Medicare
St Helena Hospital
St Vincent Hospital
Sunningdale Hospital
Sunshine Hospital
Urolocare
Vryburg Private Hospital
Wilies Hospital
Wilmed Park Private
Zoutpansberg Private Hospital
Zuid-Afrikaans Hospital

Sub-Acute Hospitals:
Care Cure Queenstown
Care Cure Rynmed
Care Cure Vereeniging
Care Cure Victoria Gardens
Carewell Sub-Acute Hospital
Centurion Sub Acute Facility
Clayton House
Corona Sub Acute Hospital
Hillandale Healthcare Centre
Intercare George
Intercare Hazeldean
Intercare Irene
Intercare Tyger Valley
Kgatelopele Wellness Centre - Care-Cure
M-Care Cape View
M-Care Highveld
M-Care Pentagon Park
M-Care Nelspruit
M-Care Newlands
Multi Care Potchefstroom
M-Care Umhlanga
Mthatha Sub Acute
Northcliff Medwedge
Oatlands Care Centre
Optenhosp Paarl
Palm Garden Retreat Helen Zille Wing
Robin Trust
Shelly Beach Sub-Acute
Spescare Helderberg Sub-Acute
Welkom Sub-Acute Hospital

Day Clinics:
Bethlehem Medical Centre
Birchmed Surgical Centre
Capital Surgical Westridge
Cape Dental Theatre
Centre for Gynecological Endoscopy
Centurion Clinic for Cosmetic Surgery
Citymed Day Clinic
Cure Day Clinics-Erasmuskloof
Cure Day Clinics - Medkin
Cure Day Clinics - Midstream
Cure Day Clinics - St Stephens's Paarl
Driftwood Day Clinic
Edenvale Day Clinic
Emalahleni Day Hospital
Fauchard Clinic
Fordsburg Day Clinic
George Surgical Centre
Intercare Hazeldean Day Clinic
Intercare Irene - Day Clinic
Intercare Day Hospital Sandton
Kilnerpark Anesthetic Clinic
Kango Clinic
Kriel Medical Clinic
KZN Day Clinic
Lakefield Surgical Centre
Lorne Street Anaesthetic Clinic
Mayo Clinic
Medgate Day Clinic
Mercidoc Day Clinic
Nelspruit Surgiclinic Hospital
Panorama Plastic Surgery Clinic
Shelly Beach Day Hospital
Somerset Aesthetic Clinic
The Surgical Institute
Welkom Medical Centre

Psychiatric:
Akeso Clinic - Alberton
Akeso Clinic - Parktown
Akeso Clinic - Johannesburg
Akeso Clinic - Pietermaritzburg
Akeso Clinic - Kenilworth
Akeso - Stepping Stones
Bloemcare (Pty) Ltd
Claro Clinic
Crescent Clinic - Cape Town
Denmar Specialist Hospital
Healing Hills Hospital
Helderberg Clinic
M-Care Optima
Parkmed Neuro Clinic
Palm Tree Trading no.8 (Pty) Ltd
Pines Clinic
Rising Sun Healthcare Facilities (Pty) Ltd
Montrose Manor
Riverview Manor Hospital
Sereno Clinic
Tijger Clinic
Tyger Valley Clinic
Vista Clinic

Ophthalmology:
Cape Eye Hospital
Centurion Eye Hospital
East London Eye Hospital
Highveld Eye Hospital
Horizon Eye Care Centre
Johannesburg Eye Hospital
Ocumed Eye & Laser Institu
Optimed Eye & Laser Clinic
Pretoria Eye Institute
Rustenburg Eye Clinic
Sandhurst Eye Clinic
The Eye & Laser Institute (Medical Forum Theatre)
The Healthy Eye
Visiclin Eye Clinic
Visiomed Eye and Laser Cen

1.2 As a matter of introduction the National Hospital Network ("NHN") is a not for profit company consisting of a confederation of private independent healthcare facilities in South Africa with its main object being to represent the collective interest of the private independent healthcare facilities in South Africa in respect of economic and social issues and negotiations with stakeholders in matters of common interest agreed to by its members with other stakeholders in its industry.

2. DRAFT GUIDELINES FOR PARTICIPATION IN THE MARKET ENQUIRY INTO THE PRIVATE HEALTHCARE SECTOR

2.1 The NHN wishes to submit that it appears as though there is a lacuna in respect of the proposed administrative timetable and its relation to the theories of harm contained in the draft statement of issues.

2.2 Insofar as the theories of harm are intended to indicate to stakeholders the issues that the panel seeks to address as a guide to stakeholders to provide written submissions and relevant information, it is submitted that the vagueness of the theories of harm are an obstacle to the relevant stakeholders ability to make accurate and relevant submissions to the panel.

2.3 It is accordingly submitted that the panel should consider whether the theories of harm are to be amplified by working papers extending the theories of harm, providing a proper definition of terms loosely used in the theories of harm, and structuring how the proposed theories of harm support the conclusion of the hypothetical harm mooted.

2.4 In as much as we understand that the panel has accepted that the theories of harm are stated in broad terms and that after receipt of submissions made in response to the statement of issues by stakeholders, the panel may refine the theories of harm. We believe this to be an incorrect approach to utilising the theories of harm as an application or tool to enable the panel to analyse submissions made. It appears more prudent for the theories of harm to be extended in order to allow for stakeholders to make comments which are succinct and relevant and which should assist the panel in properly matching the theories of harm to the market dynamic which specific stakeholders find themselves in.

2.5 In saying this the NHN further submits that theories of harm in broad terms will result in certain conduct being associated with certain role-players thereby impairing the ability of the panel to properly appreciate each particular stakeholders' relationship to the theories of harm and its ability to contextualise and analyse the submissions made by that particular stakeholder in relation to the said theory of harm.

2.6 It is therefore submitted that the panel should publish an extended paper on the theories of harm as comprehensively as possible alternatively to make provision for working papers in and during the administrative timetable, to be published by the commission, in order to enable the stakeholders to properly structure a submission to assist the panel in analysing the particular stakeholders relationship with other stakeholders in the context of the market in which they finds themselves.

2.7 Further the NHN notes that there is no room for submission post the provisional and/or final findings and recommendations to be made by the panel and in the circumstances deems it both in the interest of justice and desirable to allow a period wherein the provisional and/or final findings and recommendations are made with an appropriate time period allowed for stakeholders to make written submissions in respect of the provisional and/or final findings and recommendations made by the panel.

3. DRAFT STATEMENT OF ISSUES

3.1 In this section the NHN will propose amendments to the draft statement of issues. Where an amendment is suggested it appears in bold underlined text amongst the text to be amended.

3.2 Whilst the NHN accepts that the statement of issues are likely to evolve through the course of the enquiry it wishes to make certain comments in respect of the scope of the statement of issues in order to ensure that major aspects pertaining to cost drivers relevant to a particular stakeholder which exists in a different vacuum to other stakeholders are properly considered and contextualised.

3.3 The NHN submits that in relation to providers of healthcare products and services the relationship between imperfect information in the sector and them is appreciated only

in respect of its impact on incentives and actions of a practitioner[1] or a healthcare funders' ability to compare cost and quality when contracting providers.[2]

3.4 The statement of issues appears to not concern itself with imperfect information as an imbalance that exists for private healthcare facilities, more specifically independent hospitals, negotiating tariffs with funders.

3.5 We submit that the statement of issues stands to be extended to incorporate such imbalance and it would be apposite for same to be extended under the final bullet point of theory of harm 5 as follows:

First suggested amendment to the draft statement of issues:

"Theory of harm 5: Imperfect Information

66. It is generally accepted that many healthcare markets are characterised by imperfect information. This theory of harm considers the extent to which imperfect information distorts outcomes in the healthcare markets and harms competition.

67. Imperfect information could compromise the following decisions and processes:

- *Patients' ability to choose the best provider to deal with their condition.*
- *Members' choice of medical schemes.*
- *Healthcare funders' ability to compare cost and quality when contracting providers.*
- *Patients' lack of information available to healthcare facilities and funders on the use-value of treatment and technologies, which may lead to inappropriate use.*
- ***Imperfect information as an imbalance that exists for private healthcare facilities in negotiating tariffs with funders.***

Another form of imperfect information arises as a result of the third party payer mechanism. This may distort the incentives of the consumer and/or the provider, giving rise to adverse selection and moral hazard."

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1 Paragraph 40 of the draft statement of issues .

2 Paragraph 67 of the draft statement of issues.

3.6 It is further submitted that this aspect of imperfect information should also be included in theory of harm 2 when referring to market power of healthcare facilities during negotiations with medical schemes and/or administrators by extending same to include the words *"including market power imbalances that exist in negotiating tariffs between health care facilities and medical schemes and/or administrators"* as imperfect information results in certain stakeholders being placed in an inferior bargaining position with funders as the imperfect information lays in the eyes of that particular stakeholders and not the funders.

Second suggested amendment to the draft statement of issues:

"Theory of harm 2: Market power and distortions in relation to healthcare facilities

59. This theory of harm relates to demand and supply of healthcare services through facilities. It asks whether healthcare facilities have market power in relevant geographic markets or in certain types of specialisation and whether this market power is exercised in a manner that harms competition.

60. Market power may arise because of dominance and/ or coordination. Distortions of competition and market power relations could include:

- *Market power of healthcare facilities during negotiations with medical schemes and/or administrators* ***including market power imbalances that exist in negotiating tariffs between health care facilities and medical schemes and/or administrators****. National and local market dynamics may be considered.*
- *Market power of healthcare facilities over patients in local markets.*
- *Market power arising from healthcare facilities that offer specialised treatments.*
- *The relationships between practitioners and healthcare facilities.*
- *The relationships between healthcare facilities and suppliers of consumables."*

3.7 The NHN further submits that under theory of harm 1 the panel should include a bullet point referring to *"the relationship between providers of healthcare finance and*

healthcare facilities in respect of designated service provider or preferred provider networks" as we believe this a harm to competition.

3.8 We believe that this could be appropriately included under the bullet points referring to market power and distortions under paragraph 58 of draft statement of issues.

Third suggested amendment to the draft statement of issues:

"Theory of harm 1: Market power and distortions in healthcare financing

56. This theory of harm relates to demand and supply of healthcare financing. It hypothesises that there are providers of healthcare financing that may have market power and use this power in a manner that harms competition.

57. Market power may arise because of the dominance of individual firms or of coordination. In this market, lack of coordination might also create distortions to the detriment of competition and ultimately consumers. Other distortions could include a misalignment of incentives between providers of healthcare finance and consumers.

58. These market power relations and distortions could include the following:

- *Market power of medical schemes and other health insurance providers over members or policyholders;*
- *Market power of medical scheme administrators over medical schemes;*
- *Market power of medical schemes and administrators over providers of healthcare facilities;*
- *Market power of medical schemes and administrators over healthcare practitioners;*
- *The relationship between not-for profit medical schemes and for profit administrators;*
- *The relationship between brokers, medical schemes and consumers; and*
- *The relationship between providers of healthcare finance and suppliers of consumables.*
- ***the relationship between providers of healthcare finance and healthcare facilities in respect of designated service provider or preferred provider network arrangements."***

3.9 Finally a consistent theme absent from the statement of issues is the consideration of nursing as a human resource cost driver and the scarcity of specialists.

3.10 Further, an often apparent feature in determining the feasibility of a new private healthcare facility is the ability of the new private healthcare facility being paid sustainable tariffs by healthcare funders, or the unlikelihood of it being afforded designated service provider status, and the impact this has on the feasibility of a new private healthcare facility. This exists as a barrier to entry and expansion in healthcare facilities and it is accordingly submitted that these are elements which would have to be included in a theory of harm.

3.11 We believe that this could adequately be incorporated under theory of harm 4, paragraph 63 as follows:

<u>Fourth suggested amendment to the draft statement of issues:</u>

"Theory of harm 4: Barriers to entry and expansion at the various levels of the healthcare value chain

62. Entry or merely the threat of entry may be expected to play a significant role in the competitive outcomes of the private healthcare sector. This theory hypothesises that there are both structural barriers, which are inherent to the market, and behavioural barriers to entry and expansion in the healthcare value chain that could harm competition.

Barriers to entry and expansion into the healthcare facilities

63. Barriers to entry and expansion into the healthcare facilities may include:

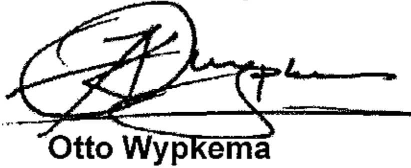
- *Substantial investment and sunk costs;*
- *Licensing and other regulatory requirements;*
- ***<u>The relationship between regulatory requirements, healthcare facilities and the training of nurses;</u>***
- ***<u>The scarcity of specialists;</u>***
- ***<u>The relationship between healthcare financing institutions and healthcare facilities; and</u>***

- *Contractual or informal arrangements between existing healthcare facilities and practitioners…"*

4. CLOSING

4.1 The above submissions on the draft statement of issues are made purely to assist the panel in appreciating the importance of extending the theories of harm by expanding on certain elements therein contained which fail to appreciate the effect of a particular theory on a particular stakeholder in its particular market vacuum.

Yours faithfully



Otto Wypkema
Chief Executive Officer