

Submission

Draft Guidelines (Competition Commission South Africa, 30 May 2014)

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6. Introduction and background

- 1.1 The Helen Suzman Foundation (HSF) would like to submit its comments to the Competition Commission of South Africa (CC) on the Draft Guidelines for Participation in the Market Inquiry into the Private Healthcare Sector (30 May 2014).
- 1.2 The HSF is a civil society organisation (NPO No. 036-281) that promotes liberal constitutional democracy and upholds the principles of the South African Constitution. The HSF is committed to reasoned discourse, fairness and equity, the protection of human rights, and the promotion of the rule of law.
- 1.3 The HSF comes from the premise that access to healthcare is a fundamental human right. The HSF has been involved in matters of healthcare since 2009 and has made several interventions including a detailed submission on the National Health Insurance Green Paper; interventions on the issue of demarcation between medical schemes and health insurance products; consultations and submissions on the Health Professions Council of South Africa's (HPCSA) Guideline tariff setting for medical and dental practitioners; and submissions to the CC on the Terms of reference for the Market Inquiry.
- 1.4 Given the combination of lobby groups, vested interests and areas of regulatory or policy stagnation, there is a clear need for members of civil society, such as the HSF, to engage in this matter in order to assist in protecting the public interest.
- 1.5 Although the vast majority of South Africa's population rely on the public health system to deliver their health care, at least 17% of the population (P77 of ToR suggest that this was the stat in 2011/2012), who are members of medical schemes, rely on the private healthcare system for their healthcare. This figure does not include the potentially many other individuals who use the private healthcare system and pay for it out of pocket. It is thus very important that the private healthcare system functions efficiently and effectively and plays its part in the provision of the right of access to healthcare.
- 1.6 It is in this light that the HSF welcomes the Private Healthcare Market Inquiry and the opportunity it presents to gain a better understanding of the market and where the problems lie, with a view to suggesting appropriate remedies.

1.7 This is so, provided that the Market Inquiry is conducted systematically, transparently and fairly, involving all relevant stakeholders, in order to ultimately benefit consumers and patients.

1.8 In this submission, the HSF wishes to comment only on specific areas of the Draft Statement of Issues.

7. Confidentiality

2.1 Section 20.1: The HSF is concerned with the extent to which confidentiality will be accepted and protected, and if it will hamper the Inquiry's power to comment on its findings.

2.2 Section 23.4: Confidentiality should only be protected in cases where it is not in the public's interest to have the information made available immediately. However, the information should be made available in the Inquiry's findings.

2.3 Sections 28.1 & 2: If any of this information reveals anti-competitive behaviour, it should not be treated as confidential in the findings of the Inquiry. We trust the Panel's judgment on such matters and that no confidentiality claims, that are important to the findings on whether anti-competitive behaviour exists, will be respected.

2.4 Section 28.6: It is unclear how confidential information can be used in the findings without specific information to stand behind it.

2.5 Section 29: Confidential from whom? If any information pertaining to anti-competitive behaviour is available to the panel, it should be made available to the public as well. Healthcare is a human right and the public has the right to know of anti-competitive behaviour in the healthcare system. Transparency is important to a constitutional democracy. However, if information requested to be confidential does not affect the findings of whether anti-competitive behaviour exists, we support that that information remain confidential.

8. Administration

3.1 Section 21.6: If parties are excluded from public hearings, will their statements or concerns be accessible to the public in another format?

3.2 Sections 21.11 & 12: If there is no running transcript provided, how long after hearings will transcripts be made available?

9. General Comments

4.1 Because the nature of an Inquiry is investigative, and because the Panel has no direct power to amend policy or enforce action, confidentiality should not be protected where the information affects and would be of interest to the public. The public need information to form the basis of any intervention, should that be necessary.

4.2 Section 13: All relevant information should be public knowledge. Where the Panel believes certain documents or statements should not be, this information should be passed on to an outside party in order to evaluate as objectively as possible, the need for secrecy. An external body should aid the Panel in deciding what information is appropriate. It should not only fall to the Panel to decide which preliminary information is made available.

4.3 Section 14: Searching premises, by members of the panel, may be necessary if suspicion arises. The information that is willingly given, by members of the healthcare system, may be strategic. We ask that you have a clause that allows for searching in order to improve chances of receiving or recovering accurate information.

10. Conclusion

5.1 The HSF thanks the CC for the opportunity to engage on this important matter. We will be taking a distinct interest in the proceedings and outcomes of the Inquiry and would be happy to assist further as the process unfolds.