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Date	30 June 2014

Dear Sirs

DRAFT GUIDELINES FOR PARTICIPATION IN THE MARKET INQUIRY INTO THE PRIVATE HEALTHCARE SECTOR

We represent Mediclinic Southern Africa Proprietary Limited ("**Mediclinic**") in the Market Inquiry into the Private Healthcare Sector ("**Inquiry**").

In response to your request for submissions on the Draft Guidelines for Participation published on 30 May 2014 ("**Draft Guidelines**"), we set out below Mediclinic's submissions on the Draft Guidelines. References to paragraph numbers in this letter are to the corresponding paragraph numbers in the Draft Guidelines, unless otherwise indicated.

1 General

1.1 Mediclinic supports the objectives of the Draft Guidelines to provide a fair opportunity and a transparent process for all stakeholders to effectively participate in the Inquiry.

1.2 In general, and subject to the submissions below, Mediclinic is of the view that the Draft Guidelines provide a comprehensive and rational framework for a fair and transparent Inquiry.

2 Timetable

2.1 Mediclinic is concerned that some of the timeframes set in the timetable on page 6 of the Draft Guidelines ("**Timetable**") are constrained and that some deadlines may not be achievable. Insofar as parties may require accommodation in respect of particular deadlines,

it is noted that (1) the Commission may amend the time within which the Inquiry is expected to be completed, and (2) the Chairperson of the Panel is authorised to exercise flexibility in the application of the Draft Guidelines to the extent that the Chairperson considers it fair to do so.

2.2 Participants will have a 3 (three) month period within which to make submissions on the subject matter of the Inquiry, and must register by no later than 30 October 2014 to make oral submissions. The Timetable does not however allow for participants to consider the written submissions of other participants and (a) furnish written submissions in response thereto; and/or (b) register to make oral submissions on issues raised therein, especially considering that registration in terms of Form HI2 requires participants to provide a summary of the issues to be covered.

2.3 Participants should be afforded an opportunity to engage meaningfully with the written submissions of other participants. Such engagement will assist the Panel in evaluating all submissions.

2.4 We accordingly suggest that it would be appropriate for the Guidelines to make provision for the following, -

2.4.1 that all written submissions should be made available on the website of the Competition Commission ("**Commission**") (subject to the appropriate confidentiality requirements) by no later than 1 November 2014;

2.4.2 that participants be given the opportunity to submit written submissions commenting on the submissions of other participants by no later than 30 November 2014; and

2.4.3 that participants must register to make oral submissions by no later than 30 November 2014.

2.5 Mediclinic is concerned that the period allowed for participants to make comments on the Panel's provisional report, and for the Panel to consider such comments, will be too short if, as contemplated in the Timetable, the provisional findings and recommendations are published in October 2015 and the Inquiry is completed in November 2015. Participants should be afforded a period of at least two months to consider and comment on the Panel's provisional report, which will include both provisional findings and recommendations.

2.6 Mediclinic makes the point in its written submissions on the Draft Statement of Issues dated 30 June 2014, that since the Panel has not provided any factual or economic evidence in support of the theories of harm set out in the Draft Statement of Issues, it is not possible for Mediclinic to engage meaningfully with the theories of harm at this stage. Accordingly, it is essential that all stakeholders be afforded the opportunity, during the course of the Inquiry, to: (1) consider and assess the strength of the evidence on which the Panel relies in developing particular theories of harm; and (2) make written and oral submissions in respect of theories of harm formulated by the Panel. The Timetable should allow reasonable time for this to occur.

3 Conduct of the Inquiry

3.1 Mediclinic notes that in the interests of a transparent process and constructive public participation the Panel will aim to make public relevant information which it has received.

3.2 In making information public the Panel is requested to take due cognisance of the potential harmful effect that the publication of untested information may have on the interests of, and investor confidence in respect of, stakeholders. Mediclinic accepts that section 44 of the Competition Act will regulate the rights of participants to claim confidentiality in respect of written and oral submissions.

4 **Written Submissions**

4.1 It is not clear whether Form HI1 should be submitted to the Panel with the written submission or at an earlier date. This should be clarified.

4.2 Form HI1, as read with paragraphs 20.1.f) and 20.8, requires a party making a written submission, where other individuals or firms are "specifically affected adversely" by the contents of the submission, to provide the name of that individual or firm, together with sufficient particulars to enable the Panel to give notice to the affected individual or firm and to afford the affected party an opportunity to respond to the submission or to be heard on the issues raised in the submission.

4.3 The obligation to identify parties which are "specifically affected adversely" by contents of written submissions should lie with the Panel, rather than with the parties making written submissions:

4.3.1 The term "specifically affected adversely" is capable of various interpretations; different participants may have different interpretations of the term;

4.3.2 It may be difficult for a participant making a submission to assess whether the contents of its submission adversely affects another individual or firm, or to identify all the individuals or firms that may be so affected; and

4.3.3 The protection of the interests of the parties who may be "specifically affected adversely" should not depend on the judgment of the parties making the written submissions.

4.4 The term "adversely affected" also sets the bar too high. Any party affected by a submission to the extent that it would be reasonable and fair to grant him an opportunity to respond to the submission, should be notified.

4.5 **Public Hearings**

4.5.1 The Chairperson of the Panel will preside over the public hearings. The Draft Guidelines are silent on the quorum of Panel members required for the public hearings. The Draft Guidelines should indicate whether <u>all</u> Panel members would be required to attend <u>all</u> sessions of the public hearings.

4.5.2 Paragraph 21.12 of the Draft Guidelines provides the Panel with a discretion as to whether a running transcript of the proceedings (subject to the requirements of confidentiality, verification and the payment of a reasonable cost of providing the transcript) will be made available. It is essential that participants in the Inquiry be given access to this transcript immediately or within a short period after the relevant proceedings. This will obviate the need for participants to attend all the public hearings and incur the costs associated with attendance. The Draft Guidelines should oblige the Panel to make a running transcript of the public hearings available to participants in the Inquiry (subject to the abovementioned requirements, but no payment should be required) immediately or within a short period after the relevant proceedings, preferably on the Commission's website. The Panel could also consider alternative forms of technology to grant participants access to the transcript, such as audio or audio-visual recordings of the proceedings.

4.5.3 It is important that hearing notices contain a detailed agenda for each hearing (paragraph 21.7).

4.5.4 The requirement in paragraph 22.3 that electronic copies of the visual presentations and/or copies of material to be introduced at a public hearing must be submitted at least 20 (twenty) business days prior to the hearing, is not practical in our view and might

result in unnecessary delays during the public hearing phase of the Inquiry. Mediclinic suggests that a period of 5 (five) business days should be adequate.

4.5.5 Insofar as paragraph 22.4 envisages that each party permitted to make an oral presentation will be restricted to only one such presentation for the duration of the Inquiry, it would be preferable that parties be restricted to one oral presentation in respect of a specific issue, or specific hearing, unless otherwise determined by the Panel in its discretion.

4.5.6 Any party affected by an oral submission should be given an opportunity to respond to that submission.

We will gladly amplify any of our aforementioned comments should that be required.

Yours sincerely

ANDRÉ DE LANGE / SUSAN MEYER
CLIFFE DEKKER HOFMEYR INC