HEALTH FUNDER ASSOCIATION LEKGOTLA

HEALTH MARKET INQUIRY
Findings and Recommendations – Multilateral Negotiation Forum for Tariff Determination

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Presented by Commissioner Tembinkosi Bonakele

competition commission
south africa

Background

- **Competition Commission initiated a Market Inquiry – to assess state of competition in the Private Healthcare sector.**

- HMI was conducted by an independent Panel, chaired by former Chief Justice Sandile Ngcobo, supported by technical team and specialist consultants.

- Motivated by high and increasing expenditure and reduced access and benefits of private healthcare in South Africa.

- High Concentration and Market Power ⟶ Uneven Bargaining Power between sector players.

- Extensive Stakeholder engagements and Final Findings and Recommendation published.

Background (cont..)

- The focus of the HMI was the private healthcare sector: The sector comprises a complex set of interrelated stakeholders who interact and bargain in various ways in the provision of care, including tariff determination.

- Analysis focused on three main markets,
  - **Healthcare facilities** (mainly hospitals and day hospitals),
  - **Providers** (specialists and general practitioners), and
  - **Funders market** (medical schemes, medical scheme administrators, and brokers).

- The HMI also focused on the **Regulatory structure**, and the extent to which it constrains competitive outcomes.

HMI Key Findings

- Overall Private Healthcare is characterised by:
  - High and rising costs
  - Significant overutilization
  - No documented improvement in health outcomes

- The incentives in this market are failing consumers.

- The facilities market is highly concentrated – At national level three big hospital groups dominate the market (**83.1% - beds** & **86.9% - Admissions**) and most local markets (60%) are also highly concentrated **– Market Power.**

- Practitioner market similarly characterised by market power of specialists and practitioner association groups and significant overutilisation. GPs generally price takers.

HMI Key Findings (Cont..)

- Competition in the funders market is neither vigorous nor effective:
  - Competition occurs on risk → proliferation of benefit options to attract younger and healthier members (58 closed schemes, 20 open schemes and about181 benefit options)
  - Incomparable options means consumers are disempowered and cannot discipline the market, compare pricing and benefits.
  - Scheme and administrator markets are highly concentrated
  - Extensive cross shareholding in the industry – potentially limiting competition.
- All these dynamics and other regulatory failures impact tariff determination in the market.
- Competition has failed – in general governments/regulators act in the event of failing markets.

TARIFF DETERMINATION

Tariff Determination – Background

- Prior to 2003, negotiations occurred centrally between HASA and RAMS (The Representative Association of Medical Schemes) (later BHF), which represented hospitals and funders respectively.

- The purpose of the negotiations was to determine a set rate for hospital services, at which hospital providers would be remunerated by funders. This approach also prevented each healthcare provider having to charge a different fee to members of different medical schemes.

- The Commission determined that the process of collective negotiations was collusive and thus from 2003, hospital groups and funders negotiated separately. There remains two instances of some degree of joint negotiations:
  - The NHN, representing around 13% of hospital beds, have been granted an exemption by the Commission, to negotiate tariffs on behalf of its members with the medical schemes/administrators.
  - Administrators allowed to negotiate tariffs for all the restricted medical schemes under their administration.

Tariff Determination – Key Findings

- Price “vacuum” since CC ruling on collective bargaining in 2003.
- CC found that collective bargaining by industry players – Collusive.
- Decision was legally correct – however created uncertainty regarding pricing in the market and imbalance of bargaining power.
- A lot more power seems to have shifted to the provider side where there is market power.
- Negotiations are largely characterised by Fee for Service (FFS) tariff increases rather than on Alternative Reimbursement Models (ARMs) – no risk sharing between funders and providers.
- FFS is a key driver for over-utilisation of services and perverse incentives.
- Practitioner associations quasi-collusive and have market power to refuse to participate in Designated Service Provider (DSPs) and ARMs.
- Too many funders and practitioners for individual negotiations to be practical.
- Industry characterised by price uncertainty with regard practitioner services – out of pocket and balance billing.
- Out-of-date clinical codes and unilateral code changes.

Tariff Determination – Recommendations

- Multilateral tariff negotiation forum (MLNF) be established by industry, including
- The MLNF collectively negotiate:
  - Under the auspices of the Supply Side Regulator of Health (SSRH)
  - Set maximum PMB prices for Practitioners, and Reference price list for non-PMB
  - Review of Clinical Coding to align to the tariffs
  - Subsequent value and risk-based bilateral negotiations are supported
  - Allows for sharing information to allow transparency in negotiations.

- Move Alternative Reimbursement Models (ARMs)
  - ARMs can benefit consumers (quality metrics), funders (certainty on cost) and providers (reward for risk)
  - Should be more prevalent in line with international precedent.

- Funders and facilities to continue with bilateral negotiations; but not business as usual
  - Within three years FFS contracts replaced with ARMs
  - These contracts to be submitted to CMS/SSRH for vetting

Progress to date - Where are we??

- Implementation and stakeholder engagements on the recommendations disrupted by the Covid-19 Pandemic.
- Stakeholder notice published in Sept 2020 to kickstart the process.
- The implementation of the SSRH long-term, and requires legislative processes to implement – however Tariff Determination – **URGENT**.
- HMI made recommendation for an Interim Solution – Using the current National Health Act provisions, to allow the **Council for Medical Schemes (CMS)** to implement and manage the process.
- Engagements with the CMS have commenced, and an MOU has been concluded in this regard.
- Other engagements held with SAMA, BHF, HFA, Section 27 and other key stakeholders.
- Efforts made to engage the NDoH to commence the process to establish the forum.

POSSIBLE SOLUTION ???

Exemption Provisions – Section 10 of the Competition Act

- Almost 2 years since the recommendations were made – status quo remains, many concerns from industry
- Our COVID19 interventions however provide lessons that could be exploited:
  - CC worked with DTIC to use **Section 10 Exemption Provisions** to allow industry to collaborate in responding to the pandemic.
  - These provisions can be extended for the establishment of the envisaged Multi-lateral Negotiation Forum for Tariff Determination.
  - The industry can apply using these provisions to commence the process.
  - These should assist industry to manage tariff increases, commence discussion of review of **Clinical coding** and **PMBs etc**, without fear of contravening the Competition Act.

Exemption Provisions – Section 10 of the Competition Act (Cont..)

- The Competition Commission may grant an exemption in terms of subsection (2) (a) only if: … (b) the agreement or practice concerned, or category of agreements or practices concerned, contributes to any of the following objectives:
  - Maintenance or promotion of exports;
  - Promotion of the effective entry into, participation in and expansion within a market by ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive;
  - Change in productive capacity necessary to stop decline in an industry;
  - The economic development, growth, transformation or stability of any industry designated by the Minister, after consulting the Minister responsible for that industry; or
  - Competitiveness and efficiency gains that promote employment or industrial expansion. …
- Therefore, if a firm provisions of Chapter 2 of the Act and can show that they contribute to one of the objectives outlined above, the firm or group of firms may apply for an exemption.

Exemption Provisions – Section 10 of the Competition Act (Cont…)

- BHF previously (2007) applied for an exemption which was denied by the CC – the structure of application could not be legally justified; it would revert to pre-2003 conduct.
- In this case, **a Regulatory Authority, the CMS** could be duly mandated by law to organize, lead and govern the MLNF in the interim.
- The terms of reference will set the conditions against which the outcomes of the multilateral negotiations will be assessed.
- The fee determined at the end of the process, by consensus, should be a capped fee beyond which the service providers would not be able to charge. This is extremely important in that it would cap previously uncapped prescribed minimum benefits ("PMB") charges.
- The process would serve as an interim solution, maximum of **two – three** years, whilst a statutory framework is being developed to regulate the industry by the NDoH.
- The conditions will, *ex ante*, specify the outcomes that will be deemed compatible with the public interest and public policy objectives, including the NHI.
- These interventions should ultimately benefit the consumer – lead to reduced prices and premiums.

Conclusion

- HMI recommended a set of interrelated interventions designed to promote systemic changes to improve the industry, to create a shift towards a pro-competitive environment – not only tariff determination.

- These recommendations must be seen as a package.

- Market failures may persist if a partial approach to the implementation of our recommendations is adopted.

- It is therefore important that other recommendations are implemented, including the following key interventions on the funders market:

  - The development of the **Single Base Package** for medical schemes, aligned with the review of Prescribed Minimum Benefits (PMBs);
  - The review of regulations relating to Trustees, Principal Officers and administrators to improve medical scheme accountability;
  - Healthcare quality and outcomes monitoring.

- The Commission remains committed to supporting the industry in implementing the recommendations.

THANK YOU

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