

Guidelines for participation in healthcare inquiry published

The Commission last week published the final Statement of Issues and Guidelines for Participation in the Market Inquiry into the Private Healthcare Sector.



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Leana Engelbrecht, senior associate in the Competition Practice at Cliffe Dekker Hofmeyr, notes that in November 2013, the Commission announced that it would conduct a market inquiry into the private healthcare sector. This announcement was made soon after the Commission was granted increased powers in respect of conducting market inquiries by virtue of the provisions of the Competition Amendment Act, 2009 relating to marketing inquiries coming into force. The Commission's inquiry is limited to that portion of the healthcare services market that is funded by private patients through direct payment medical schemes, insurance or out-of-pocket payments.

"The Commission, in its Statement of Issues, identified the financing of healthcare, providers of healthcare services and healthcare consumables as the three broad categories of this market, which it will focus on for purposes of this market inquiry," she explains.

Initial views

"The Statement of Issues sets out the initial views of the Commission of the appropriate framework for conducting the marketing inquiry as topics for consideration, although this can change during the course of the market inquiry.

"In its Statement of Issues, the Commission identifies certain theories of harm of conduct in these markets that may result in a lessening or prevention of competition and, in assessing these theories, focuses on consumers, healthcare financiers and healthcare service and product providers. This assessment includes probable concerns relating to the access of information relating to healthcare services by consumers, the price, quality and availability of healthcare services and also the relationship between consumers, healthcare providers, healthcare insurance providers, brokers and medical schemes.

"The Commission will also focus on existing regulatory frameworks in the healthcare market relating to the financing of healthcare and the structures in which healthcare providers themselves operate. Although the private healthcare market is the primary focus of the inquiry, the Commission also intends to inspect the relationship between the private and public healthcare markets," she says.

Purpose of guidelines

Engelbrecht explains that the purpose of the guidelines is to assist the inquiry panel and stakeholders in respect of the conduct of the market inquiry and provide the rules for engagement in the market inquiry. In terms of the guidelines, stakeholders are invited to participate in the market inquiry through written and oral submissions and, in some instances, requests for information from the Commission. Oral submissions will take place in an open forum during public hearings and written submissions will be publically available although stakeholders may claim information as confidential to prevent its disclosure to third parties.

"The Commission has called for submissions from stakeholders and participants that wish to participate in the healthcare inquiry by 31 October 2014. The Commission has also published a Guideline for Submissions of Technical Data and Analysis to assist stakeholders that wish to make submissions," Engelbrecht adds.

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