

Health market inquiry: what we've learnt?

 By [Nicci Botha](#)

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The Competition Commission market inquiry into South Africa's private healthcare industry is tasked with getting to the bottom of possible anti-competitive practices that could impact on the implementation of the country's proposed National Health Insurance (NHI) , among other things.



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Section 43A of the Competition Act defines a market inquiry as: “A formal inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of a particular firm”.

Speaking at the 17th Board of Healthcare Funders, Advocate Hasina Cassim started off by clarifying that although she attended the market inquiry hearings on behalf of the National Department of Health, her views were her own.

Not the first time

This is not the first time a market inquiry had been carried out in South Africa, she said. The banking sector was subject to one in 2008.

“The commission has the authority to summons parties to make submissions, and after the hearings, the relevant minister has to table a report and present it to parliament.”

“The aim of the inquiry is not to be accusatory but investigative. It provides an opportunity to look at the general state of industry and in terms of anti-competitive behaviour, the inquiry is not only backward looking, but also pre-emptive,” she said.

Why the private healthcare industry?

Cassim said market inquiries generally focused on industries that fell within the ambit of national priorities. Therefore the government’s focus on universal healthcare and NHI has sparked the current investigation to uncover the reasons the sector has features that limit competition.

NHI’s success depends on the curbing of costs in the private sector, such as CPI-plus inflation. In addition, healthcare is a constitutionally protected right, yet the sector is characterised by systemic inequalities.

Possible outcomes

Again, Cassim emphasised that she didn’t want to predict what the outcome of the market inquiry would be, but that she could cite some possibilities, namely:

- Preparation for intervention in the legislative process.
- Enhancing knowledge of the sector.
- Investigating suspected market failure (not firm-specific).
- Assessing the impact of existing regulation in a market.
- Deciding what further tools may be used if problematic features are found.
- Understanding the market for purposes of subsequent enforcement.
- Assisting the setting of internal priorities within the relevant sector.
- Assessing the state of competition.
- Defining the market for subsequent enforcement.

Insights

Cassim said she was uncertain whether the commission will meet the 5 August deadline for the preliminary report, but the only reason for delay would be due to legal intervention. “My personal wish is that we don’t have to wait, but on the other hand we want to avoid the UK experience, where retractions and corrections had to be published.”

Insights

She pointed out that the inquiry panel was a formidable team and their questioning was insightful. However, she felt that the consumer voice was very quiet.

What came through was that there was an agency failure in terms of their role as custodians and where the knowledge resides. Also the government did not get off scot free, “it’s not that they (the government) are not empowered, they’re just

not acting”.

She said she was also disappointed that the major players didn't seem to dignify the gravity of the occasion. “They sent underlings to represent them, whereas it called for the presence of the CEO.”

There was also a blame paradox, with everyone blaming everyone else with no introspection, Cassim noted.

“I've given you the vanilla version, but allow me to be a little provocative. The fact that an inquiry had to be imposed on us is an indictment of industry. We ought to have seen writing on wall and we've failed to tangibly grow the sector,” she concluded.

The 17th Board of Healthcare Funders Conference takes place at the CTICC in Cape Town from 17-20 July.

ABOUT NICCI BOTHA

Nicci Botha has been wordsmithing for more than 20 years, covering just about every subject under the sun and then some. She's strung together words on sustainable development, maritime matters, mining, marketing, medical, lifestyle... and that elixir of life - chocolate. Nicci has worked for local and international media houses including Primedia, Caxton, Lloyd's and Reuters. Her new passion is digital media.

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