

## **CIVIL SOCIETY ENGAGEMENT WITH THE MARKET INQUIRY INTO PRIVATE HEALTH**

1. SECTION27 and Corruption Watch have partnered in convening a civil society engagement in the Competition Commission's market inquiry into the private health care sector. This report sets out the outcome of civil society meetings to date as well as the first stakeholder meeting of the market inquiry.
2. The first two engagements were held on 15 and 29 April 2014. These first stakeholder meeting convened by the Market Inquiry Panel was held on 16 April 2014. These notes set out the content and outcomes of all three meetings.

### **Civil Society meeting outcomes**

3. It was agreed that SECTION27 and Corruption Watch would be the conveners of the forum for civil society going forward.
4. During both of the civil society meetings, partners agreed that a civil society presence in the inquiry was important for social justice and committed to some level of involvement in the market inquiry, dependant on available capacity and resources. Organisations agreed that the underlying values of the South African Constitution must underpin the whole process and that social justice must be at its core. There was also consensus that ensuring accountability of the private sector in health care should be an important part of our involvement as civil society. Specific issues such as consumer interests were highlighted.
5. The following principles were agreed upon:

#### **Principles and values underpinning civil society engagement**

- That the market inquiry should be framed as a public interest undertaking with particular emphasis on the right to health care services.
- That we should ensure that patients can participate in the process and that it is transparent, responsive, accountable and accessible.
- That we should emphasise the importance of holding private power and public power to account.
- That we should support the Commission as an important public institution using its powers to promote the public interest.

6. All partners agreed to return to their respective organizations in order to clarify their organizational positions and potential impact of the market inquiry on their work areas so that there can have firmer commitments the next time there is civil society engagement meeting.
7. Details of the 16 April first Stakeholder Meeting were outlined to the meeting. The floor was opened to the various representatives from each organisation to give their view on their interest in participating in the inquiry and possible role to be played in a civil society coalition.
  - 7.1. Helen Suzmann Foundation has been looking into aspects of the private health care market for some time now. They believe that there are many discrepancies. HSF would like to work with SECTION27 in terms of sharing information and perhaps meeting once/twice fortnightly.
  - 7.2. Health-e mentioned that they will not be attending the April 16th press conference because media were not allowed into the main Stakeholder meeting. They see themselves as a media partner. Health-E has an interest in compiling patient case studies through informal conversations.
  - 7.3. Soul City is mainly involved in primary health care re-engineering and community based monitoring. Soul City would like to be involved especially regarding the cost differential between private and public health care services.
  - 7.4. National Consumer Forum has an interest in ensuring lower prices and would be keen on being part of a joint submission and giving key input in terms of one or two areas.
  - 7.5. CEGAA monitors the NHI pilot sites, budget monitoring and NHI.
  - 7.6. TAC is involved in HIV/AIDS monitoring.
  - 7.7. Amnesty International is interested in the human rights perspective of the inquiry and has the ability and capacity to mobilise support for this.

### **Presentation on the Market Inquiry by SECTION27**

8. SECTION27 presented its Fact Sheet on The Competition Commission's Market Inquiry into the Private Health Sector, which was well received by the meeting.
9. The importance of the Market Inquiry and why a public interest framing is crucial was conveyed in a powerpoint presentation. A few clarifying

questions were raised pertaining to the meaning of ‘competition’ and the interchange between public and private hospitals where patients are refused treatment at private hospitals.

10. Various questions were posed from the floor:

- 10.1. Will there be a comparison of prices in the public and private sector? In particular, the heavily subsidised public health care sector and the quality in provision of health care services cannot be compared.
- 10.2. What does consumables mean and are they regulated?
- 10.3. Why can't the Commission sets prices or draft laws? The Commission is set up to regulate markets where not regulated. Remedies however will be proposed such as divestiture.
- 10.4. Cancer Alliance stated that there is a fundamental assumption of profit-taking and that this is not right. There needs to be a comparison with other countries.
- 10.5. BEMF spoke about health outcomes. Compared with other countries, South Africa is not really getting value for money. Mention was made of the impact of private health on national health data.
- 10.6. HSF spoke about their interest in analysing medical schemes and out-of-pocket expenditure.

### Attendees at civil society meetings

<b>First stakeholder meeting – 15 April 2014</b>				
	NAME	ORGANISATION	EMAIL	CONTACT
1	Laura Gonzalez	Health-E	laura@health-e.org	0764675208
2	SD Shou	CEGAA	silindile@cegae.org	0722430028
3	A Meyer	HSF	amy@hsf.org.za	0823434979
4	E Morris	HSF	eythan@hsf.org.za	0833891224
5	D Falan	RHAP	daygan@rhap.org.za	0722493873
6	S Ngcebo	TAC	Stephen.ngcebo@tac.org.za	0738460910
7	P Ncayiyama	National Consumer Forum	preciousncayiyama@gmail.com	0826336713
8	S Tshabalala	TAC	sibongilet@taccommunity.co.za	0744716318
9	P Hers	PLWC	peter@peterhers.co.za	0834454634
10	C Haskins	Amnesty International	colinhaskins@gmail.com	0614957601
11	S Kaliden	Soul City	savera@soulcity.org.za	0117717956

### Second stakeholder meeting – 29 April 2014

	NAME	ORGANISATION	EMAIL	CONTACT
1	Petunia	SLSJ	kingkhosi@gmail.com	0766282474
2	S Chinmia	Africa Check	sintha@africacheck.org	0785525444
3	J Hill	MSF	Julia.hill@joburg.msf.org	0727660335
4	W Isaak	CALS	wendy.isaak@gmail.com	0795996748

**FIRST ADDRESS BY MARKET INQUIRY PANEL – STAKEHOLDER MEETING:  
16 APRIL 2014**

**Purpose and scope of Stakeholder Meeting**

11. The main purpose of the meeting was to introduce the panel to stakeholders and present a preliminary timeline for the inquiry. The panel also presented its mandate and scope. While some stakeholders expected the release of the administrative guidelines for the inquiry to be released, the panel was not in a position to provide the guidelines during the meeting.
12. The panel took question on the principles of engagement and procedure only.

**Address by Chairperson: Former Chief Justice Sandile Ngcobo**

13. Justice Sandile Ngcobo framed his address in terms of the expectations of stakeholders. He also explained why there has been a delay in holding the first meeting. He attributed this to the preparatory work (technical work), which was supposed to be carried out by KPMG for the inquiry, but could not because of the court case with Netcare. However, he stated that the Commission is seeking alternative service providers.
14. The panel will take cognisance of international best practice from other jurisdictions where a private health care market inquiry has been carried out, such as the recent inquiry by the competition authorities in the United Kingdom.
15. Justice Ngcobo then outlined the 2009 Competition Amendment Act, which provided clarity on procedures for the conduct of a market inquiry. Mention was made of the inquisitorial nature of a market inquiry as set out in the new law. In other words, the panel will inquire into the sector as a whole and gather information about how the sector works, and is not meant to accuse specific players of unlawful conduct or target them for investigation. On the other hand, stakeholders should not expect a full investigation into each of the industry players. The principles of fairness will apply throughout the process, and, in particular, everyone would have a fair opportunity to counter adverse information.
16. The panel noted that the law allowed them to make various

recommendations, including regulation. In addition, the Competition Commission could investigate specific firms on the basis of information obtained in the inquiry. The panel did stress that it was not the purpose of the exercise to identify actors for investigation.

17. The panel advised that given the complex nature of private health care in South Africa, as well as the fact that this is the first of this type of inquiry under the new law, panel members needed to familiarise themselves with private health care and market inquiries more generally in preparation for the inquiry.
18. As the market inquiry progresses, it was pointed out that it may be necessary to re-evaluate the objectives of the inquiry in light of information obtained during the process. It was stated that it is not inconceivable that after information is disclosed the panel can find no anti-competitive behaviour.

### **Use of information obtained and confidentiality of information**

19. The panel will decide on the use of information obtained in the course of the inquiry.
20. Confidentiality will be protected. The provisions in the Competition Act on confidentiality will apply. If parties submit information marked as confidential, it must be accompanied by a written explanation justifying the claim of confidentiality. The panel will take into account the public interest in deciding whether to publish information.
21. Any stakeholder will be able to challenge a decision of the panel on confidentiality of information and an appeal may be made to the Competition Tribunal.

### **Rules of engagement**

22. The panel will publish the Administrative Guidelines for the inquiry at the end of May 2014 for public comment. The panel will be guided by international comparative experience such as good practice from the UK. Mention was made of the importance of the International Network of Competition Authorities.
23. The following will be covered in the Administrative Guidelines:
  - 23.1. Treatment of Confidential information.
  - 23.2. Procedural stages.
  - 23.3. Treatment of evidence.
  - 23.4. Non-compliance.

### **Draft documents to be released for public comment**

24. Several documents will be released on the Commission's website over the next few months. The panel outlined the following timetable:

- 31 May 2014 – statement of issues and administrative guidelines published.
- 30 June 2014 – comments from stakeholders due.
- 1 July to 31 July 2014 – consideration of public comments by panel.
- 1 August 2014 – statement of issues and administrative guidelines published
- 1 August to 30 October 2014 – submissions on subject matter of the inquiry
- 1 November 2014 to 31 January 2015 – analysis of information
- 1 March to 30 April 2015 – public hearings
- 1 May to 31 July 2015 – analysis and targeted public hearings and info requests
- October 2015 – publish provisional findings and recommendations

### **The Statement of Issues**

25. The Statement of Issues describes the issues that the panel will look into. It is not intended to be an exhaustive list and may be amplified during the course of the inquiry. Stakeholders will be able to comment. The Statement of Issues will include Theories of Harm. This is a tool to enable identification of anti-competitive practices. The panel indicated that significant comment on the theories of harm is welcome.

### **Pre-hearing meetings and stakeholder consultations**

26. The Panel intends to convene pre-hearing meetings to discuss the process for public hearings and will hold other meetings intended to aid the layman in understanding the rules of engagement. This is an important opportunity for civil society groups to engage with the panel. These engagements will take place once the panel is ready for public hearings.

27. An appeal was made to stakeholders to make evidence understandable in an accessible way - that evidence be presented in simple economic terms.

28. Throughout the duration of the inquiry, there will be seminars and workshops on the process of the inquiry. These may even be conducted individually with various stakeholders.

29. Justice Ngcobo concluded with a statement that the public interest, and the right of access to health care in particular, is key in conducting this inquiry.

### Questions Posed by Stakeholders to the Panel

30. SECTION27 emphasised the need for the panel to conduct a transparent inquiry and the importance of the public interest and the right of access to health care services. COSATU emphasised that public hearings should be held in different locations in order to ensure maximum public participation. This was supported by TAC as well. Furthermore, SECTION27 asked how the Commission intends to keep the public informed and how the patient voice will be recognised.
31. Justice Ngcobo responded by stating the following:
- '[Patients] will be heard. That we can guarantee you, they will be heard.'**
32. Justice Ngcobo made a firm commitment to have patients voices heard. It will be difficult no doubt. In answer to COSATU's questions, he also committed to trying to make translators available and to have hearings in different parts of the country, including more rural areas, if possible.
33. Anthony Norton of Nortons Inc asked whether there would be a focus on the public health care sector in the inquiry. He also asked what opportunity there will be for stakeholders to engage in cross-examination. Justice Ngcobo asked Norton to refer to the TOR in terms of the public sector focus and also that the opportunity to cross-examine will be decided on a case-by-case basis.
34. The Physicians Association stated that there is a need for a structure for the HPSCA tariff guidelines.
35. The Health Professions Council outlined their mandate and how it relates to the inquiry and expressed their willingness to be a part of the process.

### Statement by the Acting Competition Commissioner, Tembinkosi Bonakele

36. Tembinkosi Bonakele made a statement. He welcomed openness and transparency in the inquiry. He emphasised the Commission's intention to sustain the integrity of the inquiry. He stated that the appointment of a high level and independent panel shows positive intentions. He said that experts are going to play a crucial role but that a balance of views would be sought and would include users of private health care as well as people aspiring to access private health care.

### Conclusion

37. The market inquiry into private health care is an important issue for civil society to engage with. In particular, ensuring that the process of the inquiry adheres to principles of transparency, fairness and openness and that private

and public power is held to account in the process. Furthermore, bringing a human face to the market inquiry, which runs the risk of becoming a very technical exercise, will frame the inquiry properly as a human rights issue and led to outcomes that promote social justice.