

# Competition Commission may probe healthcare

*Private health charges could face similar scrutiny to bank fees*

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THE Competition Commission is considering initiating a market inquiry into the private healthcare industry reminiscent of its probe into the banking sector a few years ago, which recommended lower banking costs.

Health Minister Aaron Motsoaledi has declared war on high healthcare costs and accused the private health sector of engaging in "uncontrolled commercialism" and "destructive, unsustainable practices".

Tembinkosi Bonakele, deputy commissioner of the Competition Commission, said yesterday that there was no final decision yet on whether to launch an inquiry into the health industry.

But he said the commission was "likely" to commence with an inquiry because of growing concern about the high cost of private healthcare and the effect this had on the public healthcare system.

Mr Motsoaledi recently suggested the introduction of a pricing commission for the private health sector.

Industry players were unhappy with the proposal and argued that it was likely to result in the government facing big challenges in bringing private hospitals into a unified healthcare system when the National Health Insurance (NHI) scheme was eventually launched.

"The industry should not underestimate what is coming," Mr Bonakele said. He said many in the industry had in the past folded their arms and believed intervention by the commission would not be major. But they were wrong in most cases.

In the event the commission met resistance from the industry, Mr Bonakele said, it would "have to get a legal framework" in which to conduct the inquiry.

The banking inquiry had been a voluntary process with no need to subpoena anyone in the industry to give evidence before the commission. The inquiry made specific recommendations to the sector on ways of lowering the costs of banking.

Medi-Clinic said yesterday it would be willing to collaborate with any investigation the commission felt entitled to conduct.

Biren Valodia, head of marketing at Medi-Clinic, said the company had been at pains to comply with the Competition Act by negotiating independently with medical schemes when working out prices. Netcare and the Hospital Association of SA could not be reached

for comment yesterday.

Anthony Norton, a director of Nortons Inc, a specialist law firm practising primarily in competition law, said the regulatory environment in the healthcare sector was currently quite fluid, with draft proposals on the NHI only recently released. There were other regulatory issues at play, with little clarity on several government initiatives.

"It could be quite tricky for an inquiry to come out with any definitive findings, given the fluid situation. A lot will depend on the ambit and terms of reference of the inquiry," Mr Norton said.

The Competition Amendment Act provided for market inquiries, but because the president had not yet promulgated the implementation date of the act, the commission would need a legal framework for its inquiry.

Mr Bonakele said: "We are determined to sort it out and will ensure that we get a framework for enforcement..."

"If there is to be closer co-operation between the private and public health sectors, it will be critical to have the assurance that the pricing arrangements will not be exploitative."

Nicola Theron, MD of Econex, said yesterday that the healthcare sector was unique as normal competition principles did not apply. More hospitals in a specific area did not necessarily lead to lower prices, as in other markets. "Several countries battle with rising healthcare costs, even those with a national health insurance system, (so) it is not unique to SA," Ms Theron said.

"Research has indicated that there are specific cost drivers in the health sector such as better technology and ageing populations —and in SA we have a high burden of disease such as HIV/AIDS and tuberculosis."

Ms Theron said the complexity of the problem was well illustrated by the mess that followed the com-

mission's ban on collective bargaining by hospitals with medical schemes in 2002. The result had been that, even though there were recommended tariffs, many service providers charged far more. The government understood that any doctor contracted with the NHI should be paid a tariff comparable with current rates. "The danger is that public-sector prices could rise to that of the private sector and, given the current difference in quality, one cannot expect the public-sector tariff to be the standard," she said.

The commission may play a role in pricing structures, but Ms Theron was not convinced that it would contribute much in dealing with the challenges of implementing the NHI.

Mr Norton said an issue that was often neglected in the debate about the high cost of private healthcare was that if the public had more confidence in its public health services, there would not have been such a dependence on private healthcare.

Mr Bonakele said the Competition Commission was also taking stock of its strategic decisions in the past five years and was mapping out a strategic focus for the next five years.

It would be finalising its fast-tracking settlement programme in the investigations of construction cartels and hoped to conclude them in the second quarter next year. Companies which do not settle will face the Competition Tribunal in public hearings.

A defining feature for competition law will be the outcome of the commission's Constitutional Court challenges in some highly publicised cases, including Yara and Omnia fertiliser, Senwes grain storage and the vehicle tracking case involving Netstar.

The commission needed clarity on the extent of its powers of investigation and the methods it had been using, or there could be continued delays in proceedings, Mr Bonakele said.

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