

COMPETITION

COMMISSION'S INQUIRY PANEL PRESENTS INFORMATION SESSION ON THE STATUS OF THE MARKET INQUIRY INTO THE PRIVATE HEALTHCARE SECTOR

On 5 February 2015 the Panel of the Market Inquiry into the Private Healthcare Sector (Inquiry) presented an information session on the status of the Inquiry. On the same day the Panel published the non-confidential stakeholder submissions it received. The Panel further invited stakeholders to make limited additional submissions in respect of the submissions received by the Panel.

The Panel expressed their gratitude for the various submissions already received but also indicated that not all stakeholder in the private healthcare market made submissions to the Panel. Despite this, the Panel was satisfied with the extent of submissions received.

The Panel summarised the major themes that emerged from the submissions, being:

- that private healthcare expenditure is high and that private healthcare inflation is higher than general inflation;
- concerns about the regulatory environment in the private healthcare market;
- concerns about lack of information available to patients, highlighting a general lack of transparency in accessing private healthcare information, in particular on pricing costs and quality of services; and
- the challenges of reconciling recommendations relating to the private healthcare sector and the development and implementation of long-term public healthcare policies.

The Panel indicated that this is not an exhaustive list of themes that it is considering and also hastened to add that it has not formed any views on these or other issues and that the Panel's views will be reflected in its provisional findings, which stakeholders and the public will have an opportunity to comment on.

The Panel stressed that it is committed to fairness, openness and transparency as far as possible during this process and as part of this commitment, it is publishing all the relevant submissions received. Stakeholders are invited to comment on these submissions to address material issues that appear from the submissions made by other stakeholders. The Panel emphasised that this is not an opportunity for any stakeholder to make further submissions or to make submissions if they did not

previously make submissions to the Panel. The deadlines for these submissions is 17h00 on Thursday, 5 March 2015. It was raised during the question and answer session that a month may not be sufficient time to consider the sixty eight submissions made to the Panel and to meaningfully comment on these submissions. The Chairperson indicated that this deadline may be reconsidered, however, did not commit to any extension.

Going forward, the Panel will engage with various stakeholders on the content of their submissions and will issue written requests for information where needed. The Panel may also request meetings with relevant stakeholders (which is likely to take the form of site visits). Due to the Inquiry's timeline, this process will have to be completed by Tuesday, 31 March 2015.

Following the stakeholder engagement, public hearings will be conducted. Pre-hearing meetings with stakeholders will be scheduled to work out a timetable for the public hearings. It is anticipated that these pre-hearing meetings may take place at the beginning of April, but the exact date is still to be announced. The Commission has published an invitation for stakeholders to participate in the public hearing and the deadline for registration is 31 March 2015.

Following the public hearings, the Panel will publish its provisional findings in which it will set out the data and information it relied upon, its methodology and its provisional conclusions. Stakeholders and the public will then have further time to comment on these provisional findings and recommendations. The Panel will then present its final recommendations.

The Panel stressed that it is constrained in terms of timing. The deadline for the completion of the Inquiry is November 2015, however, if the need arises this deadline can be extended. The Panel will have an internal planning session towards the end of February to make decisions on a possible review of its timeline (which is likely) and an announcement to this effect will probably follow in early March.

Leana Engelbrecht

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INQUIRY PANEL PRESENTS
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MARKET INQUIRY INTO
THE PRIVATE
HEALTHCARE SECTOR

COMMISSION REFERS
COLLUSION CASE AGAINST
NATAL PORTLAND CEMENT
CIMPOR PROPRIETARY
LIMITED

DEADLINE FOR COMMENTS
ON PUBLIC INTEREST
GUIDELINES EXTENDED

COMMISSION REFERS COLLUSION CASE AGAINST NATAL PORTLAND CEMENT CIMPOR PROPRIETARY LIMITED

From 2008 the Competition Commission has been investigating the cement industry. In particular, the Commission investigated whether the effects of a lawful cartel in respect of the manufacture and distribution of cement persisted. This lawful cartel existed in terms of an exemption granted to cement producers in terms of legislation, which was withdrawn by the Competition Board in 1995 and the cartel had to be terminated by the end of September 1996.

To give effect to the lawful cartel a set of institutional arrangements were agreed upon. In terms of these arrangements:

- market shares between the participants were agreed to based on the production capacity of each firm;
- the South African market was divided into two main regions (North and South);
- the participants' cement was sold and distributed through Cement Distributors (South Africa) Proprietary Limited (CDSA) in the Northern Region and Cape Sales Proprietary Limited (Cape Sales) in the Southern Region and, at the end of each accounting period, the proceeds of the cement sales were distributed between the participants based on a quota; and
- a uniform pricing model was agreed upon.

These agreements persisted following the termination of the legal cartel. Pretoria Portland Cement Company Limited (PPC), Lafarge Industries South Africa Proprietary Limited (Lafarge), AfriSam (South Africa) Proprietary Limited (AfriSam) and Natal Portland Cement Cimpor Proprietary Limited (NPC) agreed to exchange information through the auditors of the Cement and Concrete Institute in order to monitor and maintain market shares and pricing structures.

PPC was granted leniency in this investigation and, accordingly, was not liable to pay an administrative penalty. AfriSam and Lafarge both settled with the Commission, on payment of a penalty of 3% and 6% of turnover, respectively.

Accordingly, NPC was the only party in this matter not to settle with the Commission and, the Commission has now decided to prosecute the matter against NPC and seek the maximum penalty of 10% of NPC's total turnover.

This case highlights the Commission's approach in the event of not being able to settle with a respondent in a complaint. In terms of the Competition Act, No 89 of 1998, co-operation with the competition authorities is a prescribed factor to be taken into account when determining an administrative penalty and a refusal to engage in negotiations with the Commission is considered an aggravating factor. The Commission will, accordingly, seek a higher penalty against respondents that are not willing to settle than the penalty agreed with respondents that settled.

Leana Engelbrecht

SPECIAL ANNOUNCEMENT

DEADLINE FOR COMMENTS ON PUBLIC INTEREST GUIDELINES EXTENDED

The Competition Commission published draft Guidelines for the Assessment of Public Interest Provisions in Mergers during January 2015. The initial deadline for submitting comments on these guidelines was 23 February 2015 and this deadline has now been extended until 5 March 2015.

CONTACT US

For more information about our Competition practice and services, please contact:



Nick Altini
National Practice Head
Director
T +27 (0)11 562 1079
E nick.altini@dlacdh.com



Chris Charter
Director
T +27 (0)11 562 1053
E chris.charter@dlacdh.com



Albert Aukema
Senior Associate
T +27 (0)11 562 1205
E albert.aukema@dlacdh.com



Andries Le Grange
Director
T +27 (0)11 562 1092
E andries.legrange@dlacdh.com



Leana Engelbrecht
Senior Associate
T +27 (0)11 562 1239
E leana.engelbrecht@dlacdh.com



Susan Meyer
Director
T +27(0)21 481 6469
E susan.meyer@dlacdh.com



Nazeera Mia
Senior Associate
T +27 (0)21 481 6337
E nazeera.ramroop@dlacdh.com



Natalie von Ey
Director
T +27 (0)11 562 1333
E natalie.von_ey@dlacdh.com



Naasha Loopoo
Associate
T +27 (0)11 562 1010
E naasha.loopoo@dlacdh.com



Kitso Tlhabanelo
Associate
T +27 (0)11 562 1544
E kitso.tlhabanelo@dlacdh.com

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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196, Private Bag X40 Benmore 2010 South Africa
Dx 154 Randburg and Dx 42 Johannesburg
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@dlacdh.com

CAPE TOWN

11 Buitengracht Street Cape Town 8001, PO Box 695 Cape Town 8000 South Africa
Dx 5 Cape Town
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@dlacdh.com

cliffedekkerhofmeyr.com

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