

Commission on Patient Safety and Quality Assurance
Department of Health and Children
Hawkins House (room 3.20)
Dublin 2

Tuesday, 20th November 2007

Re: Submissions Sought

Dear Sirs

Following your advertisement for submissions, the Competition Authority has examined your terms of reference and wishes to make the following observations.

Overall, the terms of reference are extremely wide ranging and general in nature. The issues under consideration may raise competition concerns in certain circumstances but it is difficult for the Competition Authority to offer advice at such an early stage in the process. One issue that we can more easily address at this stage is the consideration of *"a statutory system of licensing for public and private health care providers and services"*.

Statutory licensing systems have the potential to create unnecessary and harmful barriers to entry, depending on how they are designed and the nature of the problem(s) they are aimed at addressing. It is difficult to provide specific advice in the absence of a concrete proposal but some general principles apply to designing statutory licensing systems.

First, any licensing system must be proportionate to the problem it wishes to address. Frequently of concern to competition authorities is that licensing systems can be used to "pull up the drawbridge" - so that existing providers are grandfathered in and yet equally or more efficient potential providers are refused a licence. For example, the use of *"Certificates of Need"* in other countries, whereby a potential provider must prove that there is a need for their facility/service before being granted a licence. Such a system goes beyond what is necessary to promote high standards and creates an unnecessary and unjustified barrier to new providers. Once new providers meet the standards set out by the licensing system, it should be up to the market (in this case private health insurers and the HSE) to decide whether there is a need or not.

Second, the conditions for a licence must be set by an appropriate body in a transparent manner. An appropriate body is one which is independent of any one interest group.

Finally, the criteria for a licensing system should be clear and avoid inhibiting the emergence of new technologies and ways of treating patients.

These principles are in line with the principles laid down by the Government in its White Paper "*Regulating Better*".

The Competition Authority would be happy to advise specifically on any more concrete proposals by the Commission in the future. If you feel this would be helpful, or would like advice on any other competition related aspect of your deliberations, please do not hesitate to contact us.

Yours faithfully

Declan Purcell
Member of the Competition Authority
Director of Advocacy

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