



The Competition Authority

An tÚdarás Iomaíochta

Mr Brian Turner
The Health Insurance Authority
Canal House
Canal Road
Dublin 6

3rd June 2005

Re Proposed amendments to Health Insurance Act (Minimum Benefit) Regulations, 1996

Dear Mr Turner

Following our meeting of Tuesday 10 May 2005, I am writing to confirm the Competition Authority's ("the Authority") position in relation to potential amendments to the Health Insurance Act (Minimum Benefit) Regulations, 1996 ("Minimum Benefit Regulations").

In the context of an ongoing Authority investigation, the Authority recently carried out detailed analysis of the markets for private health insurance and medical consultants' services in Ireland. During this investigation, we identified that the Minimum Benefit Regulations could impact upon prices for medical consultants' services and, hence, private health insurance. By fixing the minimum prices paid to consultants for specified procedures, the current Minimum Benefit Regulations have the potential to distort competition within markets for medical consultant services and also private health insurance.

In practice, increases in the prices of medical procedures mean that the current rates stipulated in the Minimum Benefit Regulations do not affect the market for consultants' services. However, the inherent harm in fixing minimum prices could occur if these rates were revised. Negative effects could result from any such amendment. As discussed, the Authority would not support such an amendment because of the potential for detrimental effects upon competition in this sector.

It is important to be aware that the regulation of price and product characteristics can dampen and distort the operation of market forces to the detriment of consumers. This can occur even if there is a valid reason for regulation, for instance, consumers may not have the expertise to evaluate complex products. However, even in such circumstances it is important that regulation work with the grain of the market and that alternatives to regulation are carefully considered before regulation is imposed.

That said, we would support legislative amendments to the Minimum Benefit Regulations that remove references to the fixed minimum monetary amounts that insurers must pay for specific procedures and services. In our view, private insurance policyholders would be just as effectively protected, if not more so, if insurers covered the actual amounts charged for specified treatments. Similarly, insurers could cover a proportion of the total amount charged rather than the full amount. In either case, the potential for competition to be hindered by arbitrary minimum rates is eliminated without compromising the objective of protecting

policyholders, achieved by requiring insurers to provide a minimum level of benefits. We assume, of course, that the charges set are the minimum that can be obtained given current market conditions.

We acknowledge that in some instances, requiring insurers to cover the costs of treatments may place insurers in a vulnerable position if a consultant, or other treatment provider, has a strong bargaining position. This could occur, for example, if there is only one specialist consultant in a certain region. Such a consultant may decide not to participate in industry wide agreements and may be able to exploit their bargaining power by charging insurers more than would be charged if the consultant faced more competition.

We believe that the best method of alleviating such problems of consultants' bargaining power is to tackle the source of any market power directly, rather than regulating the consultant fee level (i.e., the symptom). Consequently, the Department of Health and Children should evaluate whether there are barriers to a larger number of consultants entering the market, with a view to removing any unjustified barriers. We also consider that health insurers could use consultants and other health service providers in other jurisdictions as another method of alleviating problems of market power within Ireland. Either the patient could travel to see the consultant or, depending on the volume of demand and the particular speciality, the consultant could travel to the particular regions to treat the patients.

While we recognise that increasing supply and/or using alternative providers is the most effective way to resolve the problem of consultants possessing market power, we also acknowledge that such changes may take some time to take effect. In the meantime the issue arises as to whether or not the Health Insurance Authority should set an upper limit¹ for repayments for certain treatments where a particular consultant has strong bargaining power. We agree that one method of setting such a fee would be reference to consultants providing the same services but in a region of the State where there is greater competition. However, great care would need to be taken in setting such a fee level since there may be unintended consequences. For example, if price setting becomes extensive it may reduce the incentive for new lower cost methods of delivery.

Regarding restrictions in the Minimum Benefits Regulations on the insurance products that insurers can offer, we would urge you to be mindful of the potential for detriment to competition and harm to consumers that could arise from these restrictions. There may occasionally be tensions between competition principles and the aims of health care and health insurers must operate within an environment of community rating. However, restrictions on competition to achieve social goals in health care, such as preventing competition based on the selection of good risks, must be proportionate to the objectives they seek to achieve. We agree that in some cases "certain steps are warranted in the interests of more effective market operation and to benefit the consumer", as stated in the Department of Health and Children's 1999 White Paper. However, we would suggest that any restrictions on competition should be minimised and should be proportional to the policy objectives they seek to achieve. The issue of proportionality is outlined in the White Paper "Regulating Better", released by the Department of the Taoiseach in 2004.

Restrictions on the range of insurance products that health insurers, or other insurers, may offer can hinder competition. This can be to the detriment of consumers by reducing the choice of insurance policies available to them. We

¹ Upper limits have a tendency to become the actual price in such circumstances.

would ask that your recommendations to the Department of Health and Children take account of these potentially harmful aspects of the Minimum Benefit Regulations.

Along with the typical benefits of competition, including higher quality services, better value for money for consumers and increased innovation, another positive effect in this market is that competition may help increase awareness of health insurance amongst consumers. Competition is likely to be associated with promotional activity by competing insurers. Along with the efforts of the Health Insurance Authority itself, competition may have contributed to the general increase in consumer awareness of health insurance that has been uncovered in your recent survey.

I trust this is of assistance. Thank you again for making yourself available to discuss this issue and for your assistance generally. If you wish to discuss further any points raised in this letter, please contact myself or any of my colleagues.

Yours sincerely

PP Vivienne Ryan, Manager, Monopolies Division
Dr Paul K Gorecki,
Member and Director, Monopolies Division