

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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Designing publicly funded healthcare markets – Note by Estonia

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This document reproduces a written contribution from Estonia submitted for Item 4 of the 66th OECD Working Party 2 meeting on 26 November 2018.

More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/designing-publicly-funded-healthcare-markets.htm>

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Estonia

1. Estonia is generally considered a country with rather liberal trade policies, but at the same time there are situations in the legislation where the regulatory environment of the state either hampers free competition, or at least does not create the best possible conditions for it. The Competition authority has made suggestions about amending, for instance, the Medicinal Products Act, the Public Transport Act, the Waste Act, etc. One of the examples is the proposal to amend the Health Insurance Act, in which the Authority has suggested that certain clear and transparent criteria be added to the Act that – if met – would give the Health Insurance Fund the right to accord preference to hospitals, covered by the hospital network development plan, over private hospitals without any restrictions. Usually restrictions on competition contained in several legal acts are not laid down by someone's intent to hamper competition; instead limiting competition is often seen as means to obtain another objective, not directly connected with enterprise. The mission of the Authority in such situation is in fact to emphasise the significance of free competition, and to assess whether restriction of competition is indeed the best way to achieve different objectives.

1. Proposal to change the distribution of medical treatment funding

2. In 2014 the Competition Authority analysed competitive situation in medical treatment funding. Assessment of the competitive situation vis-à-vis financing of medical treatments was initiated in connection with applications received from a number of health service providers, in which the applicants asked the Competition Authority's opinion about the conclusion of contracts for financing medical treatments by the Estonian Health Insurance Fund. Namely in respect of financing health services the Health Insurance Fund gives precedence to hospitals listed in the Hospital Network Development Plan (hereinafter HNNDP), and therefore other health service providers are put in an unequal position in comparison with the hospitals covered by HNNDP. The analysis focused on the issue of whether – in case of certain specialities (e.g. outpatient medical rehabilitation) – the Health Insurance Fund's selection of service providers could be arranged such that HNNDP hospitals identified in the development plan were not accorded preference in awarding contracts, and that due selection were to involve all tenderers/ health service providers. Although the analysis used medical rehabilitation as an example, this does not mean that in certain cases the results of the analysis would not be applicable to other health services as well. Feasibility of free competition depends on the particular speciality, and in the case of many highly demanding specialities (for instance, complicated operations, etc.) it is rather doubtful whether free competition would be justified. Therefore the recommendation contained in the analysis is applicable, above all, to those specialities, which have been traditionally rendered by health service providers that are not covered by the HNNDP (non-HNNDP health service providers).

3. Health Insurance Fund covers the costs of health services required by the person in case of illness and is the only organisation in Estonia dealing with compulsory health insurance. A contract with the Health Insurance Fund secures a health service provider turnover and patients. Therefore, awarding of contracts for financing medical treatments does affect the competitive situation on the health services market, as it gives service

providers with a contract an advantage over the service providers who have not been awarded a contract.

4. The Health Insurance Act sets out a number of criteria¹, which the Health Insurance Fund has to consider when concluding a contract for financing medical treatments. Moreover, the Act also prescribes that the Health Insurance Fund has to conclude contracts with hospitals covered by HNDP, at least within a certain scope². The Competition Authority admitted that the Act leaves room for applying rather different methods of distributing finances for medical treatment. However, the Act does not contain any provisions that would directly respond to the question about the ways and principles of deciding on how to distribute finances between HNDP and non-HNDP health service providers. Nevertheless, the Competition Authority has reached the conclusion that the approach applied by the Health Insurance Fund is not probably the only way of implementing the Health Insurance Act.

5. There is no transparent and unambiguous regulation in current legislation, which could serve as a basis for the Health Insurance Fund for deciding the distribution of funding between the HNDP hospitals and the rest of the health care providers. The Health Insurance Fund has chosen to solely prefer HNDP hospitals. The Competition Authority underlines that free competition may be of great benefit for both the patients and for the Health Insurance Fund. The current approach of the latter preferring solely the HNDP hospitals distorts competition which would be excluded in a normal competitive situation. This may lead to situations where the more expensive and/ or of lower quality service offered by the HNDP hospital is preferred of the others. According to the Authority, possible counter arguments against free competition should be considered on a case-by-case basis and the HNDP hospital preference should not be automatic in the process of treatment funding. Currently, such a consideration is not carried out.

6. Therefore, the Authority made a proposal to the Ministry of Social Affairs to initiate the draft to amend the Health Insurance Act in order to add clear and transparent criteria for the distribution of treatment funding between health care institutions to the Act. Only in the case of the fulfilment of these criteria, the Health Insurance Fund could have the right to prefer the HNDP hospitals in certain specialties without any restrictions to funding. In case of health care services that do not meet the criteria, all health care providers should have a chance to compete on equal terms.

7. The Competition Authority is convinced that a respective amendment of the Act would increase transparency of distributing the funds for financing medical treatments, and

¹ The Health Insurance Fund takes into account the following circumstances: 1) the need of the insured persons for the service, and the availability of the service; 2) the quality of and conditions for the provision of the service; 3) the price of the service; 4) the possibility of the service being provided in accordance with the standard conditions of accommodation; 5) the maximum number of health care providers providing the health service; 6) figures regarding the average density of provision of the health service; 7) developments in national health policy; 8) whether the health care provider has performed previous contracts for financing medical treatment or other similar contracts as required; 9) the existence or absence of tax arrears and the general financial situation of the health care provider; 10) compliance with legislation regulating health insurance and health by the health care provider or the employer thereof.

² The health insurance fund will conclude a contract for financing medical treatment for a term of at least five years with a person who owns a hospital specified in the development plan of the hospital network

in justified cases introducing free competition would improve efficiency. Furthermore, clear and transparent rules would also give the Health Insurance Fund a more convincing mandate to give precedence to HNDP hospitals, if appropriate, and would avert unnecessary disputes. Until now, the Health Insurance Act is unchanged regarding this matter.