

Mr William Prasifka,
Chairman,
The Competition Authority,
14 Parnell Square,
Dublin 2.
20 March 2006.

Dear Sir,

Re: Competition in the private health insurance market.

I wish to respond to your announcement of a public consultation process in the national media on 15 March 2006 on the above issue. I believe that the interventions of the State and its agencies in this area have been entirely inappropriate on the following grounds:-

1. The public notice appeared in the media during the sixth week of a law case dealing with these issues. Should the State and VHI win the case an impossible burden will be placed on the only significant competing health insurance provider, BUPA Ireland. It will withdraw and the message to other health insurance providers will be clear. The State in Ireland will intervene in the market for private health insurance in order to protect the previous State monopoly provider. Should BUPA Ireland win the edifice of protectionism in the sector will be swept away and this consultation process will be redundant. Why does the State decide now to engage in a public consultation process some three months after it had decided as a matter of urgency to require the payment of €161m from BUPA Ireland to VHI over a three year period.? I submit that the State has acted with extreme prejudice against BUPA Ireland by imposing an extreme penalty first and engaging in a public consultation afterwards. I note with concern that two parties to the decision to impose the immense burden of compensation on BUPA Ireland, the Department of Health and Children and the Health Insurance Authority, engaged in discussions with the Competition Authority in which the terms of reference for the project were agreed. I submit that the record of these bodies in the matter of health insurance competition lacks credibility.

2. The State in Ireland acts with extreme prejudice against private sector competition in several fields. In the Aer Lingus case the State intervened before the company was established in 1936 and in every decade subsequently until the 1990s to undermine competition in access transport. Deregulation was forced on the Department by a parliamentary revolt against further protectionism in the 1984 Air Transport Bill. Given the huge reductions in fares and the large increase in numbers travelling we can see the huge cost to Ireland as an outer offshore island of protectionism in aviation. Similarly in the bus sector the State acts with extreme prejudice against new market entrants. In the Nestor Bus case, a parallel with the present health insurance case, the State had two teams of lawyers in the High Court, representing the department and CIE. The benefits of bus competition are well documented in lower fares on routes with competition and greater frequency on routes such as Dublin to Galway and Waterford, and latterly, to Belfast and Cork. The return fare to Cork is now €12 with competition between Bus Eireann and Aircoach. It was €32 under the Bus Eireann monopoly.

Bogus "social" reasons were/are used by the State to justify its sanctions against competing airlines and bus companies. They are without justification. Ryanair operates at a significant profit serving routes which Aer Lingus stated to require cross subsidisation from the Dublin-London route. No list of socially necessary loss making bus routes has been published by CIE to justify its protection for over seventy years. As the Goodbody Report on the sector indicates the private bus sector operates without subsidy or investment grants a fleet over twice the CIE bus fleet. The protection of the ESB monopoly of distribution is not unrelated to the high price of electricity in Ireland compared to the rest of the EU and in particular its excess cost in Ireland compared to the competitive market in Britain. I believe that the State's dominant policy objective of protecting a State company, VHI, is also the core obstacle to an efficient health insurance market in Ireland.

3. The premise in public policy that new health insurance market entrants should subsidise VHI because the latter had decades of a headstart on BUPA Ireland and therefore has older aged members is a major obstacle to other new entrants. The prospect of large transfers from BUPA Ireland to VHI has relieved the latter of the normal incentive in market competition to reduce costs and extract monopoly rents from suppliers of services. The threat of being forced to pay large transfers to the previous monopoly health insurance company has restricted the ability of BUPA Ireland to develop its business. The threat to BUPA in turn acts as a deterrent to other prospective new entrants. Requiring new entrants to subsidise incumbents is a serious entry deterrent in a sector.

4. Unless it is proven that BUPA Ireland has refused cover there is no case that that company has any obligation to cross-subsidise any VHI customers. The subsidy rules are a major barrier to switching. It is surely wrong that customers transferring from VHI to BUPA Ireland should face a premium rise in order to subsidise the health insurance provider they have just left.

5. The HIA should be abolished. It has chosen to be the defender of the old VHI monopoly and to ignore the many benefits which competition has brought to the customers of both VHI and BUPA Ireland. These include extra services and products and the end of balanced billing. There is no case for the invitation in the public advertisement that respondents should "identify duties that could be assigned to the Health Insurance Authority under existing legislative provisions and additional functions that might be possibly be assigned to the Health Insurance Authority." An independent insurance ombudsman should ensure easy switching from VHI to BUPA Ireland and deal with any complaints that BUPA Ireland has refused enrollment or denied lifetime cover. As VHI customers who joined when it was a monopoly almost fifty years ago die off and others transfer to BUPA Ireland the need for government intervention will wither away. The York Health Economics Consortium Report shows that there is no advantage to BUPA Ireland from its later market entry in the case of female customers. Where older male customers of VHI decide not to respond to BUPA Ireland's invitations to transfer, despite the savings which they would enjoy from this transfer, it is difficult to make any case for further regulatory intervention. The Health Insurance Authority currently exhibits


6. symptoms of regulatory capture by VHI. By preventing competition in the sector it will reduce consumer welfare. There is also the prospect of regulatory creep, a process of creeping expansion of regulation by bodies which lack any reason to exist in the first case. Competition should be promoted across the wider economy rather than by allowing individual sectors to opt out. Sectoral regulatory bodies become anticompetitive generators of economic rents for the bodies they are supposed to regulate in the public interest. The Irish record of regulatory capture of sectoral regulators is deplorable not alone in health insurance but in sectors such as transport and energy also.

6. I note that the Competition Authority and Health Insurance Authority intend to issue a "joint report" by the end of September. Given the contradictory roles of the Competition Authority which promotes competition, and the Health Insurance Authority in protecting the previous mono poly supplier, there should be no question of such a "joint report". It is also a matter of serious concern that, depending on the High Court decision, there may be no future for competition in the sector by the end of September deadline.

7. As a member of the Brennan Commission I was appalled at the inefficiency and restrictive practices throughout the Irish health service, the minimal return on the massive increase in health spending since 1997 and the many examples of incompetence and maladministration highlighted in the Travers Report, the PPARS report and successive reports of the Comptroller and Auditor General. The market entry of BUPA Ireland to the health insurance market in Ireland was possibly the only pro-efficiency and competition decision made in the Irish health service in decades. The machinery of the State has been relentlessly used over most of the last year to deny Irish consumers the benefits of new market entry to the health insurance sector in order to protect the State's own company, VHI.

8. The health insurance case in Ireland is a deplorable example of the State engaging in administrative and legal protectionism in order to assist a previous state monopoly and to obstruct a new entrant competitor. Health insurance companies, like all producers of goods and services, should compete to serve their customers. The diversion of producer effort and resources from serving the customer into lobbying, time consuming regulator and administrative compliance requirements, public relations campaigns, and extremely costly legal proceedings over many months for both the State and the two health insurance companies, cannot have been good for either the State in relation to competition in the services sector or the health insurance companies.

Yours sincerely,


Dr Sean D. Barrett,
Economics Department,
Trinity College,
Dublin.