

GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 120 OF 2009

NOTICE OF AN APPLICATION FOR AN EXEMPTION IN TERMS OF SECTION 10(1)(b) OF THE COMPETITION ACT 89 OF 1998: NEW NATIONAL HOSPITAL NETWORK

An application for an exemption from the provisions of the Competition Act 89 of 1998, as amended ("the Competition Act") has been filed with the Competition Commission of South Africa ("the Commission") by the New National Hospital Network ("NNHN"), in terms of Section 10(1)(b) of the Competition Act.¹

The NNHN is a non-listed company, which is a co-operative venture controlled by a group of independent private² hospitals. It was formerly known as the National Hospital Network ("NHN"). The NHN was granted an exemption by the Commission in terms of Section 10(1)(b)(ii) of the Competition Act in 2005.³

The present application is in respect of collective bargaining between the shareholders of the NNHN and individual medical schemes and administrators, as well as agreements that result from the collective bargaining.

Specifically, the NNHN has requested that it be permitted to engage in the following activities among its members with medical schemes and/or medical schemes administrators: -

- NNHN's members to agree collectively to implement prices negotiated and entered into on their behalf by NNHN with medical schemes and/or medical scheme administrators.
- Promote the interests of its members and to market their services and also to provide a base for benchmarking which would help NNHN members to increase efficiencies.

The NNHN submits that the collective agreements between its members and shareholders would contravene section 4(1)(b) of the Competition Act which is a *per se* prohibition that cannot be defended on efficiency, technological or pro-competitive grounds. The NNHN avers that the above conduct is however necessary to attain the objective stipulated under section 10 (3)(b)(ii) of the Competition Act, namely, that it contributes to the objective of promoting the ability of small business and also firms owned or controlled by historically disadvantaged persons to become competitive.

As noted above, the Commission had previously granted the NHN an exemption for similar agreements for a period of five (5) years, which lapsed on 4 November 2008. The Commission found that the agreements negotiated and entered into by the NHN constituted a contravention of section 4(1)(b)(i) of the Competition Act. However, the Commission exempted the conduct as it was found to be necessary to attain the objective stipulated under section 10 (3)(b)(ii) of the Competition Act. The NNHN is effectively requesting the Commission to further exempt the collective conduct of its members for another 10 (ten) years, ending 04 November 2018.

¹ Competition Commission case no. 2008Oct4076

² Independent in the context of this exemption application means, hospitals not owned or controlled by one of the three large hospital groups, that is Netcare Holdings, Life Health Group and Medi-Clinic.

³ Under case no:2003Nov717, Notice 775 published in Gazette 28924 of 15 June 2006.