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## GENERAL NOTICES

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### NOTICE 1639 OF 2005

#### NOTICE OF AN EXEMPTION GRANTED IN TERMS OF SECTION 10 OF THE COMPETITION ACT 1898: SCRIPTPHARM HOLDINGS (PTY) LTD AND OTHERS

Notice is hereby given in terms of section 10 of the Competition Act 1998 ("the Act") that the Competition Commission ("the Commission") has decided on 27 May 2005 to grant a category exemption, with certain conditions attached, in terms of section 10(1)(b) of the Competition Act 1008, as amended ("the Act") for a period of three years ending in July 2008.

A category exemption is granted in response to an application for an exemption from the application of Chapter 2 of the Act by Scriptpharm Holdings (Pty) Ltd ("Scriptpharm Holdings"), Scriptnet Limited, Scriptpharm Risk Management (Pty) Ltd ("Scriptpharm Risk") and retail pharmacies that have contracted with Scriptpharm Holdings or Scriptpharm Risk (collectively "the Applicants").

The Applicants applied for an exemption for a category of agreements, as provided for in section 10(1)(b) of the Act, from the provisions of section 4(1)(b)(i) of Chapter 2 of the Act. The application relates to agreements in terms of which the involved pharmacists agree to and are permitted to support and/or implement the terms and conditions of agreements negotiated and entered into on their behalf with medical aid schemes and medical scheme administrators.

The applicants submit that the agreements are required to attain the objective set out in section 10(3)(b)(ii), namely that it contributes to the objective of promoting the ability of small businesses, or firms owned or controlled by historically disadvantaged firms to become competitive.

The applicants have demonstrated that participation in these arrangements does promote the ability of small business pharmacists to become competitive. Further, they have demonstrated that the restrictions for which they seek exemption are required in order for the arrangements to function. The applicants have thus fulfilled the requirements to be granted an exemption in terms of s10(3)(b)(ii) of the Act.

#### THE CONDITIONS

The category exemption is granted for a period of three years ending July 2008 on condition that:

1. Scriptpharm Holdings continue as an independent managed care organization and that no practicing pharmacist, pharmacy or pharmacy group be permitted to hold shares in Scriptpharm Holdings:

2. Scriptpharm Risk continue ~~as~~ an independent managed care organization and that no practicing pharmacist, pharmacy or pharmacy group be permitted to hold shares in Scriptpharm Risk;
3. Scriptpharm Holdings and/or Scriptpharm Risk enter into separate vertical agreements with each participating pharmacist for purposes of administering its managed care agreements; and
4. All pharmacists and/or pharmacies contracted to Scriptpharm Holdings and/or Scriptpharm Risk are free to contract with any other network of pharmacies or managed care organization of their choice;
4. The applicants report back on an annual basis to the Commission that the grounds upon which the exemption was granted has been maintained. In particular, a detailed list of all members of Scriptnet for the year must be provided, specifically identifying those members that qualify as SMME's and/or HDI's.

In terms of Rule 19(5) of the Rules For the Conduct Of Proceedings In the Competition Commission, the Commission has provided full written reasons for Its decision. A copy of these reasons may be obtained from the investigator whose particulars are provided below,

In terms of section 10(8) of the Competition Act (89 of 1998), the *firm* concerned, or any other person with a substantial financial interest affected by this decision of the Competition Commission, may appeal this decision to the Competition Tribunal in the *prescribed* manner within 20 business days after the date of publication of this notice in the Government Gazette.

**Published by:** Mr. K Weeks, Senior Investigator, Enforcement and Exemptions, Competition Commission of South Africa, The dti Campus, Block C Mulayo Building, 77 Melntjies Street, Sunnyside, Pretoria. Contact numbers: (012) 394 3258 or 394 3200.

Reference case number: 2004Mar895