

NOTICE 775 OF 2006**COMPETITION COMMISSION****NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): CONDITIONAL EXEMPTION GRANTED**

Notice was given in the Government Gazette on 02 April 2004 (Government Notice 26180 of 2004) that National Hospital Network (herein referred to as "NHN") had, in terms of section 10 of the Competition Act, No 89 of 1998, as amended ("the Act"), applied to the Competition Commission ("Commission") for an exemption from certain provisions of Chapter 2 of the Act in respect of an agreement/s with medical schemes and/or medical scheme administrators.

The most important feature of the agreement/agreements are that it provides for:

- NHN's members to agree collectively to implement prices negotiated and entered into on their behalf by NHN with medical schemes and/or medical scheme administrators.

Since members of NHN are in a horizontal relationship, that is a relationship between firms operating at the same level of a market, the agreement/s are in contravention of Section 4(1)(b)(ii) of the Competition Act (the Act).

Section 10(3)(b) of the Act, provides for four grounds on which an exemption application may be granted and NHN aver that one of these grounds are relevant, namely:

- The promotion of the ability of small business, or firms controlled or owned by historically disadvantaged persons, to become competitive [section 10(3)(b)(ii)];

The Commission has, after consideration of the terms of the proposed agreement/s and investigation, concluded that it constitutes price fixing, in contravention of section 4(1)(b) of the Act.

The Commission is satisfied that NHN, whose majority of members are either small business or firms controlled or owned by historically disadvantaged persons, will be contributing to the objective as set out in section 10(3)(b)(ii) of the Act (i.e. to become competitive).

Section 10(2)(a) of the Act provides that conditional exemption may be granted for a specified term.

Notice is hereby given in terms of section 10(7) of the Act that NHN has been granted an exemption in terms of section 10(2)(a) of the Act for a period of five years, i.e. from 04 November 2003 to 03 November 2008 on condition that:

- Netcare, Medi Clinic and Afrox (Life Health Care) or any of their directly or indirectly affiliated groups are not allowed to have any shareholding or interest in NHN.**

In terms of Rule 19(5) of the Rules for the Conduct of Proceedings in the Competition Commission, the Commission has provided written reasons for its decision. A copy of those reasons may be obtained from the manager of whose particulars are indicated below.

Notice is further hereby given in terms of section 10(8) of the Act, that NHN, or any other person with a substantial financial interest affected by the abovementioned decision of the Commission, may appeal the decision to the Competition Tribunal in the prescribed manner.

Any queries in this regard should be directed to: Mr Thulani Kunene (manager), Enforcement and Exemptions Division, Private Bag X23, Lynnwood Ridge, 0040; or at facsimile 012 394 4218, citing case number 2003 Nov 717.