

No. 826

12 October 2012

MEMORANDUM OF AGREEMENT

entered into between

THE COMPETITION COMMISSION
(Hereinafter referred to as "the Commission")

And

COUNCIL FOR MEDICAL SCHEMES
(Hereinafter referred to as "the Council")

WHEREAS~

The Commission is a juristic person established in terms of the provisions of section 19 of the Competition Act, 1998 (Act No.89 of 1998), as amended ("the Competition Act"), herein duly represented by Mr. Shan Ramburuth, in his capacity as the Commissioner of the Commission.

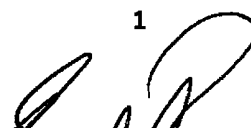
WHEREAS~

The Council is a statutory body established in terms of section 3 of the Medical Schemes Act, 1998 (Act No.131 of 1998), herein duly represented by Dr Monwabisi Gantsho in his capacity as the Registrar of the Council.

WHEREAS~

The Council shall, in terms of the provisions of section 7(a) of the Medical Schemes Act, protect the interests of beneficiaries at all times. To that end the Council shall, *inter alia*,

- a. confirm expositions of amalgamations and transfers of medical schemes, as provided for in terms of section 63 of the Medical Schemes Act; and
- b. exempt in terms of section 8(h), a medical scheme or other person from complying with any provision of the Medical Schemes Act.

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WHEREAS~

The Commission is established in order to, *inter alia*, investigate, control, and evaluate restrictive practices, abuse of dominant position, exemptions and mergers.

WHEREAS~

The Commission, in terms of section 21(1)(h), read with sections 3(1A)(b) and 82(1), (2) and (3) of the Competition Act, has a responsibility to negotiate agreements with any regulatory authority co-ordinate and harmonise the exercise of concurrent jurisdiction in respect of competition matters and to ensure the consistent application of the principles of the Competition Act.

THEREFORE, the parties agree to conclude this Agreement as follows:

1. OBJECTIVE AND SCOPE

The objective of this agreement is to establish a formal basis for-

- 1.1 co-operative governance enshrined in section 41 of the Constitution and the Competition Act in the exercise of jurisdiction over the competition matters within the medical schemes industry;
- 1.2 managing areas of concurrent jurisdiction; and
- 1.3 providing for the exchange of information and the protection of confidential information.

This Agreement is entered into on the basis of mutual respect, in a spirit of goodwill and does not affect the independence of the regulatory bodies herein.

2. COMMENCEMENT AND DURATION

This Agreement shall commence on the date of last signature of the parties, and shall remain in force until it is replaced, cancelled or repealed by agreement between the parties.

3. APPLICATION FOR APPROVAL: AMALGAMATION AND TRANSFER TRANSACTIONS**3.1 Application for amalgamation approval: concurrent jurisdiction**

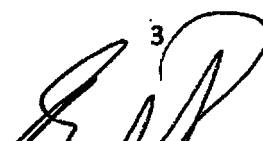
- a. Where a transaction requires the approval of both the Council and the Commission, the transacting parties shall submit separate and concurrent applications to the Commission in terms of the Competition Act and to the Council in terms of the Medical Schemes Act, for their respective consideration.
- b. The Council and the Commission shall thereafter make independent determinations on the basis of the criteria and mandate of their respective legislation. In arriving at these determinations the Commission and the Council may consult with each other.



- c. In the event of the Council and the Commission arriving at different determinations, the following process shall apply:
- I. The Council and the Commission may discuss the matter in order to identify the reason for the difference in the determinations. If such differing determinations pertain to substantially similar criteria by both the Council and the Commission, the parties shall determine whether such issues could be resolved prior to the determinations being made public;
 - II. If the Council and the Commission reach an agreement following the process set in I. above, the Council and the Commission shall make known their unanimous decision to the applicant(s) and the transaction shall be confirmed or rejected accordingly;
 - III. If the difference in the determination cannot be resolved following the process set in II. above, the Council and the Commission shall make known their respective determinations and reasons for the decisions to the applicant(s);

3.2 Application for amalgamation approval: No concurrent jurisdiction

- a. Where a transaction requires the approval of either the Council or the Commission, but not both, the following procedure shall apply:
- I. The applicant seeking approval shall lodge the application with the regulator with jurisdiction;
 - II. If the Council is the regulator with jurisdiction, it may, if it is legally competent under its legislation to take into account considerations of competition, consult with the Commission so as to ensure the consistent application of competition principles to the transaction in question.
 - III. If the Commission is the regulator with jurisdiction, it may, if it is legally competent under its legislation to take into account considerations of medical schemes, administrators of medical schemes, managed health care entities, or health care brokers, consult with the Council so as to ensure the consistent application of medical schemes principles to the transaction in question.
- b. In the circumstances contemplated in a. above, the decision of the regulator exercising jurisdiction to consult the other regulator shall be discretionary and voluntary. The regulator exercising jurisdiction shall with or without consultation make its independent decision.

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- 3.3 In either of the circumstances set out in 3.1 or 3.2 above, the Council and the Commission may participate in each other's proceedings and may advise or receive advice from each other.
- 3.4 When the Commission and the Council consult each other as contemplated in 3.1.b. or 3.2.a. above, they shall do so at no cost to each other.
- 3.5 In either of the circumstances contemplated in 3.1 or 3.2 above, the Council and the Commission shall act as expeditiously as circumstances permit and shall each encourage the other party to achieve a timely response.

4. INVESTIGATION OF COMPLAINTS

4.1 Complaints: Concurrent Jurisdiction

a. Where a complaint is lodged about a practice in respect of which the Commission and the Council have concurrent jurisdiction, the following process may be followed:

- i. The regulator that receives the complaint ("the recipient regulator") may make the complaint available to the other regulator after a formal decision to investigate the complaint has been taken;
- ii. Where the recipient regulator deems it appropriate, the recipient regulator may inform the complainant that the matter shall be discussed jointly by the Commission and the Council in terms of this Agreement;
- iii. The Council and the Commission shall consult each other and evaluate the complaint in order to establish how the complaint may be managed in terms of this Agreement;
- iv. The recipient regulator shall inform the complainant of the decision of the consultation between the Commission and the Council within 60 days of receipt of the complaint;
- v. The recipient regulator shall give the complainant further directions regarding the prosecution of the complaint in issue;
- vi. In the event that the complaint is dealt with by the Council, persons from the Commission may participate in an advisory capacity.
- vii. In the event that the complaint is dealt with by the Commission, persons from the Council may participate in an advisory capacity.

4.2 In evaluating how the complaint may be managed, the parties must have regard to the principle that –

- i. The Commission has primary authority to detect and investigate alleged prohibited practices in order to give effect to the Competition Act;
- ii. The Council has primary authority to exercise powers and perform functions assigned to it in terms of the Medical Schemes Act.



4.3 Nothing in the procedure contemplated in paragraph 4.1 shall detract from the jurisdiction of the Council or Commission to receive and deal with complaints in terms of their enabling statutes. Nor shall it preclude parties from lodging a complaint with both regulators

4.4 Complaints: No Concurrent Jurisdiction

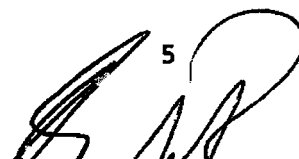
a. Where a complaint is lodged about a practice in respect of which either the Commission or the Council has jurisdiction, but there is no concurrent jurisdiction, the following process shall be followed:

- i. The complainant must lodge the complaint with the regulator that has jurisdiction;
- ii. If upon receiving a complaint, the regulator is of the view that it does not have jurisdiction over the complaint, the regulator with whom the complaint is lodged shall inform the complainant accordingly and advise the complainant to refer the complaint to the relevant regulator.
- iii. If the Council is the regulator with jurisdiction, it may, if it is legally competent under its legislation to take into account considerations of competition principles, consult with the Commission so as to ensure the consistent application of competition principles to the complaint in question.
- iv. If the Commission is the regulator with jurisdiction, it may, if it is legally competent under its legislation to take into account considerations of medical schemes, administrators of medical schemes, managed health care entities, or health care brokers; consult with the Commission so as to ensure the consistent application of medical schemes principles to the complaint in question.
- v. The Council and the Commission may, upon request from each other, participate in each other's proceedings in their advisory capacity.

4.5 In the circumstances contemplated in 4.3 above, the decision of the regulator exercising jurisdiction to consult the other regulator shall be discretionary and voluntary. The regulator exercising jurisdiction shall with or without consultation make its independent decision;

4.6 When the Commission and the Council consult each other as contemplated in 4.1 or 4.3 above, they shall do so at no cost to each other.

4.7 In either of the circumstances contemplated in 4.1 or 4.3 above, the Council and the Commission shall act expeditiously as circumstances permit and shall each encourage the other party to achieve a timely response.

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5. EXCHANGE OF INFORMATION

Subject to paragraph 7 below, the Council and the Commission may exchange such information as may be necessary to give effect to this agreement.

6. APPLICATION FOR EXEMPTIONS

6.1. If the Council receives an application for exemption in terms of section 8(h) of the Medical Schemes Act, the granting of which appears to have a bearing on the regulatory jurisdiction of the Commission, the Council shall, prior to a decision being taken on the application-

- a) transmit a copy of the application to the Commission for its information and advice; and
- b) provide opportunity to the Commission to provide comments on the proposed exemption.

6.2 If the Commission receives an application for exemption in terms of section 10 of the Competition Act, the granting of which appears to have a bearing on the regulatory jurisdiction of the Council, the Commission shall, prior to a decision being taken on the application-

- a) transmit a non-confidential copy of the application to the Council for its information and advice; and
- b) provide opportunity to the Council to provide comments on the proposed exemption.

7. TREATMENT OF CONFIDENTIAL INFORMATION

7.1 Any information shared by the Commission and Council pursuant to this Agreement shall be used only for lawful supervisory and statutory purposes.

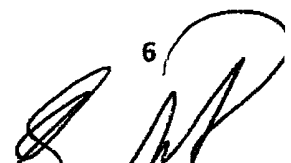
7.2 The Council and the Commission shall share confidential information subject to section 30 of the Medical Schemes Act, and Chapter 5 (Part A) of the Competition Act, respectively.

7.3 The regulator providing the confidential information pursuant to this Agreement shall clearly indicate what information is confidential to the regulator receiving the confidential information.

8. IMPLEMENTATION AND DISPUTE RESOLUTION

8.1 The Council and the Commission shall each designate a specific individual from its organization to manage the implementation of this memorandum. These individuals

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will liaise in relation to all instances of cooperation initiated in terms of this agreement, to ensure that the obligations of the respective parties are satisfactory fulfilled.

- 8.2 If the Council or the Commission is of the opinion that the other party is not acting in accordance with the letter or spirit of this memorandum, the matter shall be dealt with through interaction between the Registrar and the Commissioner.

9. VARIATION AND AMENDMENTS TO THE AGREEMENT

Any variations or amendments to this Agreement shall have no legal effect and shall not be binding on the Council and The Commission unless reduced into writing and signed by parties authorised to act on behalf of both the parties.

10. DOMICILIUM CITANDI ET EXECUTANDI AND SIGNATORIES

The parties choose the following addresses as their respective points of contact to receive any process and communication for purposes of this Agreement:

The Competition Commission

Department of Trade and Industry Campus

Mulayo Building, Block C

77 Meintjies Street

Sunnyside

Pretoria

Contact Person:

The Council for Medical Schemes

Block E, Hadefields Office Park

1267 Pretorius Street

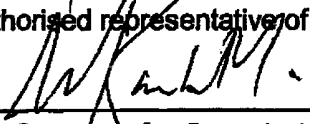
Hatfield, Pretoria

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Contact Person:

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Signed at Pretoria on this day 12 of September 2011 by Mr. Shan Ramburuth, a duly authorised representative of the Commission.

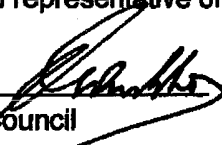


Signature for Commission

1. Witness

2. Witness

Signed at Pretoria on this day 12th of September 2011 by Dr. Monwabisi Gantsho, a duly authorised representative of the Council.



Signature for Council



1. Witness



2. Witness

11. PUBLICATION

In accordance with the provisions of this section 83(2)(d) of the Competition Act, this Agreement shall be published the *Gazette* for public information as soon as it has been signed.