NOTICE 289 OF 2013

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MEDICLINIC SOUTHERN AFRICA LIMITED

AND

SOLAR SPECTRUM TRADING 242 (PROPRIETARY) LIMITED

2012MAY0225

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Mediclinic Southern Africa Limited ("**Mediclinic**") that own private hospitals that provide a range of general and specialised medical care facilities and services.

The primary target firm is Solar Spectrum Trading 242 (Pty) Ltd ("**Opco**"), a shelf company that was created for the purpose of obtaining the hospital license and does not provide any services or offer any products. Opco is the holder of an approval dated the 27th of March 2009, granted by the Gauteng Department of Health ("**GDOH**"), for the establishment of a private hospital ("**Target Hospital**").

In terms of the Principal Agreement concluded between the parties, Mediclinic will acquire more than 50% of the shareholding in Opco resulting in Mediclinic having control over Opco.

The Commission analysed the transaction using a narrowest market which included the location where the Target Hospital would be built, and the surrounding areas within a 30km radius and found that, even within this worst case scenario, Mediclinic's market share is unlikely to pose significant competition concerns.

Post-merger, the merged entities will face competition from bigger players such as Netcare and Life Healthcare, who have a stronger presence in the Gauteng region, as well as other independent private hospitals.

The Commission investigated Mediclinic's plans to expand its current hospitals and other pending hospital licence applications in light of the doctrine of creeping mergers in adopting a conservative approach to analysing the transaction, as health is a priority sector which faces challenges of accessibility and pricing throughout South Africa. When consideration is given to these expansions and pending additional hospital licence applications, Mediclinic's market share in the narrowest geographic market is still unlikely to pose significant competition concerns.

Barriers to entry in this market are high with time, regulatory and financial sunk costs making it difficult for a new entrant. The evidence presented on countervailing power for medical aid schemes is mixed and it is suggesting that such power exist to some degree through medical schemes that can negotiate tariffs with service providers and hospital groups to get onto their preferred service provider list. The medical aid schemes contacted by the Commission during the course of the investigation did not raise any concerns, submitting that prices are negotiated at a national level and therefore the proposed merger is unlikely to change pricing. Cognisant of the market dynamics (high prices and uncertainty with respect to medical aid schemes' countervailing power), the proposed transaction is relatively small and is therefore unlikely to enhance the distortions in the private hospital market.

The Commission found exclusivity clauses in previous shareholders agreements which Mediclinic had entered into with other strategic BEE partners, which are in the Commission's view anti-competitive and related to this proposed transaction. The Commission has agreed with the merging parties to remove these clauses and have imposed a condition in this regard. The Commission engaged the GDOH in light of the process which it follows when granting licences to new applicants, due to the concern raised and the potential harm found in the exclusivity clauses. The Commission is of the view that this harm needs to be addressed through advocacy with the GDOH going forward to safeguard competition in the private hospital market and encourage new entrants in the market.

Furthermore, there are no public interest issues raised by the proposed transaction or any other concerns by third parties.

The Commission therefore approves the transaction subject to conditions (which having been agreed between the merging parties and the Commission, to be treated as confidential).

All reporting documents and correspondences in relation to these conditions must be submitted to the Commission's email address: mergerconditions@compcom.co.za

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.