

**NOTICE 43 OF 2014****NOTICE OF AN APPLICATION FOR AN EXEMPTION IN TERMS OF SECTION  
10(1)(b) OF THE COMPETITION ACT 89 OF 1998:  
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 National Hospital Network ("NHN"), in terms of Section 10(1)(b) of the Competition Act.

The NHN is a limited non-listed company. Membership is limited to independent private hospitals operating in Southern Africa. 'Independent' in this context of the application means hospitals not owned or controlled by one of the following hospital groups: Netcare Holdings, Life Healthcare Group and Medi-Clinic (herein after collectively referred to as "the three large hospital groups").

The NHN has been granted exemptions by the Commission in terms of Section 10(3)(b)(ii) of the Competition Act on two (2) occasions before.<sup>1</sup> The grounds and rationale for the current exemption application are similar to those that were previously presented to the Commission in the previous applications.

The application for exemption primarily relates to tariff negotiations between the NHN acting on behalf of its members and individual medical schemes and medical scheme administrators, as well as agreements that result from the collective bargaining. In addition the NHN also promotes the interests of its members and markets their services and provides a base for benchmarking.

Also of relevance in this current application are the revised conditions of membership which the NHN wishes to impose on its current and potential members. The following are the conditions of membership which the NHN wishes to impose:

- a) No member shall be directly or indirectly associated with any one of the three large hospital groups. This shall apply to ownership, control or any other association in terms of which any of the three large hospital groups have insight into the business activities of the member.
- b) Members shall comply with the payment terms and conditions of agreements entered into on their behalf by the NHN.
- c) Although members shall be permitted to enter into individual agreements with schemes and administrators where so-called "local options" make that feasible, they shall submit such agreements to the NHN for vetting and approval.

The latter condition is proposed to be implemented as from January 2014 and be applied retroactively to all current members and shall be a condition to new members.

More specifically, the NHN has requested that it be permitted to engage in the following activities:

- Continuing to service existing agreements with medical schemes and/or medical scheme administrators;
- Entering into new agreements with medical schemes and/or medical scheme administrators;

<sup>1</sup> Case no: 2003Nov717, Notice 775 published in Gazette 28924 of 15 June 2006 and 2008Oct4076, Notice 417 published in Gazette 33192 of 21 May 2010.

- Accepting new members into the NHN who are not directly or indirectly controlled by, or affiliated with, any one of the three large hospital groups
- That all members should adhere to the revised membership criteria.
- Continuing to promote the interests of its members and to market their services and also to provide a base for benchmarking.

The NHN submits that the collective agreements between its members and shareholders would contravene section 4(1)(b)(i) of the Competition Act which is a *per se* prohibition that cannot be defended on efficiency, technological or pro-competitive grounds. The NHN avers that the above conduct is however necessary to attain the objective stipulated under section 10(3)(b)(ii) of the 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. The NHN is of the view that the only manner in which the majority of independent hospitals will be able to survive in the long term would be to continue to collaborate in their negotiations with medical schemes and to create competition in the market.

The NHN has requested that that exemption be granted for a period of five (5) years. Though the NHN has expressed its preference for a longer period their request is based on the fact that the Commission had previously granted the NHN with exemptions for similar agreements for a period of five (5) years each.

In accordance with the provisions of Section 10(6)(a) of the Competition Act, notice is hereby given of the above application for exemption. Interested parties can make written submissions to the Commission as to why the exemption should or should not be granted as required by section 10(6)(b) of the Competition Act.

**Such submissions must reach the Commission within 20 (twenty) business days from the date of this Notice and should be directed to:**

Mr. Sipho Mtombeni / Mr. Ricky Mann  
Enforcement and Exemptions Division  
Competition Commission  
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**In correspondence, kindly refer to case number: 2013NOV0553**