

NOTICE 867 OF 2014**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998****(AS AMENDED)****NATIONAL HEALTH NETWORK (2013NOV0553)****CONDITIONAL EXEMPTION GRANTED**

Notice was given in the Government Gazette on 31 January 2014 (Government Notice 37262, Notice 43 of 2014) that the National Health Network ("NHN") applied to the Competition Commission (the "Commission") for an exemption from the provisions of Chapter 2 of the Competition Act No. 89 of 1998, as amended (the "Competition Act"), in terms of Section 10(1)(b).

The justification relied upon by the NHN is in respect of section 10 (3) (b) (ii) of the Competition Act, which makes provision for a firm to apply for an exemption if the objective of the practice is to promote the ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive. The NHN sought to have an exemption for a period of five (5) years.

Specifically, NHN had requested that it be permitted to engage in the following activities when negotiating with medical schemes and/or administrators:

- 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; and
- To promote the interests of its members and to market their services and also to provide a base for benchmarking which would help NHN members to increase efficiencies.

Notice is therefore given in terms of section 10(7) of the Competition Act that the exemption application by NHN has been **granted** for a period of **four (4) years commencing on 1 January 2014 and ending on 31 December 2017**, subject to the following condition:

- The NHN is required to submit relevant information to the Commission on an annual basis as would be required to monitor the impact of the measures taken to meet the objective relied upon and to assess whether the NHN is meeting the objective on an on-going basis.

The Commission's analysis of the exemption application found that the conduct by NHN would amount to a contravention of section 4(1)(b)(i) of the Competition Act, a *per se* contravention which does not allow for efficiency justifications.

In relation to the grounds upon which NHN relied for their application, the following findings were made:

- In terms of section 10(3)(b)(ii), the purpose of the exemption must be the promotion of *small businesses* or *firms* controlled by *historically disadvantaged persons* ("*HDPs*"). Taking into account all the relevant facts, the Commission found that the conduct sought to be exempt would contribute to this objective.

The Commission's investigation revealed that many NHN members individually would not be able to negotiate prices that would allow them to compete with the big three (3) hospital

groups¹. Through the NHN grouping, the members get the benefit of the collectively negotiated prices. The NHN has also been able, through previous exemptions² granted by the Commission, to gain market share in the last five (5) years in terms of expenditure and movement of patients to NHN hospitals. In addition, the Commission is of the view that the membership rules will improve the NHN's ability to achieve the said objectives.

The Commission was also cognisant of the market inquiry it is currently conducting in the private healthcare sector, which is likely to yield significant information regarding the underlying dynamics in the healthcare industry. The Commission further considered submissions received from a number of stakeholders in the health industry. The submissions were mixed, with some supportive of the application and others not. The Commission is however satisfied that the concerns raised have been adequately addressed.

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

Any queries in this regard should be directed to:

Mr Ricky Mann
Enforcement and Exemptions Division
Telephone: 012 394 3581
Email: RickyM@Compcom.co.za

In correspondence, kindly refer to case no. 2013Nov0553

¹ Mediclinic Corporation Ltd, Life Healthcare Group (Pty) Ltd and Netcare Holdings Ltd

² 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.