

ECONOMIC DEVELOPMENT DEPARTMENT**NO. 1191****02 NOVEMBER 2018****COMPETITION COMMISSION****NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED) - CONDITIONAL EXEMPTION GRANTED****NATIONAL HEALTH NETWORK (2017AUG0020)**

The Competition Commission ("Commission") published a Notice in the Government Gazette on 13 October 2017 (government Notice No 41178 of 2017) with regard to the exemption application filed by the National Health Network ("NHN"). The exemption was filed in terms of section 10(3)(b)(ii) of the Competition Act No 89 of 1998, as amended ("the Competition Act").

The NHN is a non-profit company, a co-operative venture that is controlled by its members, a group of independent private hospitals who run medical establishments such as day clinics, sub-acute facilities and psychiatric facilities. These members are broadly competitors in the provision of private healthcare services.

NHN requested the Commission, that the exemption granted to it until 31 December 2017 be extended and that it be permitted to continue to engage in the following activities on behalf of its members with medical aid schemes and/or medical scheme administrators: -

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

In addition to the above exemption, the NHN sought a further exemption to engage on behalf of its members in global fee negotiations with medical schemes, administrators, the state and

healthcare providers (professional associations) and to undertake collective or centralised procurement.

The Commission evaluated the application as a possible contravention of Chapter 2 of the Competition Act. The application is based on the ground that it is necessary to obtain the objectives of section 10(3)(b) of the Competition Act, being: *“(ii) promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive.”*

The Commission’s investigation revealed that NHN has been operating under exemptions¹ from the Competition Act, permitting it to collectively negotiate tariffs with the medical schemes and/or medical scheme administrators. The exemption has enabled NHN to get tariffs for its members that enabled them to grow in competition with the big three hospitals. Through the exemption, some of NHN members were able to grow in terms of number of beds, facilities etc. The last exemption was due to expire in December 2017 but was extended to 31 October 2018 by the Commission. The Commission’s investigation revealed that the market dynamics remained the same and as a result, the exemption is still required to enable NHN members to be able to continue growing in competition with the big three hospitals.

In addition, the Commission is of the view that the conduct in respect of centralised procurement and global fees will improve NHN’s ability to achieve the said objectives.

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 **five (5) years commencing on 1 November 2018 and ending on 31 October 2023**, subject to the following conditions:

1. “Grace Period Condition”

1.1 *The NHN members who fail to qualify as either small businesses or firms owned or controlled by historically disadvantaged persons as is required by section 10(3)(b)(ii) of the Act:*

- a. *Shall be afforded a period of 24 months (twenty four) from the date on which the Application for Exemption is granted to transform its shareholding so as to conform with the*

¹ Case no: 2003Nov717, Notice 775 published in Gazette 28924 of 15 June 2006; 2008Oct4076, Notice 417 published in Gazette 33192 of 21 May 2010, and 2013Nov0553, Notice No. 38059 of 31 January 2014.

requirements of a firm owned or controlled by a historically disadvantaged person as set out in section 10(3)(b)(ii).

- b. The affected NHN members must, after a period of 12 (twelve) months from the date on which the Application for Exemption is granted, submit a report detailing the progress that they have made to comply with the requirements of a firm owned or controlled by a historically disadvantaged person as set out in section 10(3)(b)(ii).*
- c. Any firm failing to meet the legislative criteria as set out in section 10(3)(b)(ii) of the Act at the expiry of the 24 (twenty four) month period as set out above shall be automatically excluded from the Exemption.*

2. Global Fees

2.1 The NHN when entering into global fee arrangements undertakes to adhere to the following conditions:

- a. Carve-outs or exclusions from this specific alternative reimbursement method shall be limited and that global fees be negotiated on the premise of full risk sharing between the medical aid schemes and administrators and the providers of healthcare services.*
- b. The negotiation of global fees agreements shall specifically incorporate clearly defined quality and performance metrics which shall be transparent and evidence based.*
- c. The NHN shall, as part of its general annual reporting condition below, report on all global fees that were negotiated annually.*

3. Annual Submission of Information

3.1 NHN is required to submit 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.

3.2 *In addition to the above, NHN must during the period of the exemption, implement competitive strategies aimed at providing additional services to its members outside of the collective bargaining process. The purpose of this condition is to provide ongoing support to members, in order to improve their competitiveness in the market.*

3.3 *NHN must implement measures to track the number of members whose competitiveness has improved as a result of the implementation of the aforementioned conditions. These information must be submitted to the Commission on an annual basis.*

The conditions imposed are intended to enable the NHN to achieve fully the objectives in the exemption application and for the Commission to effectively monitor implementation.

Notice is therefore given in terms of section 10(8) of the 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:

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Market Conduct Division

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In correspondence, kindly refer to case no. 2017AUG0020.