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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

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## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 319

20 MARCH 2020

## COMPETITION COMMISSION

**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED) - THE COMPETITION COMMISSION OF SOUTH AFRICA - NOTICE OF AMENDMENTS TO THE CONDITIONS OF EXEMPTION****NATIONAL HOSPITAL NETWORK (2017AUG0020)**

1. The Competition Commission ("**Commission**") published a Notice of the conditional granting of the National Hospital Network's ("**NHN**") application for exemption in the Government Gazette on 7 December 2018 (government Notice No 42092 of 2018), as provided for by section 10(7) of the Competition Act No 89 of 1998, as amended ("**Act**") read with Rule 19(5) of the Rules of Conduct of Proceedings in the Commission.
2. The Commission granted the NHN an exemption in terms of section 10(3)(b)(ii) of the Act for the extension of its current exemption from certain provisions of Chapter 2 of the Act. The conduct for which the exemption was sought related to collective bargaining between the shareholders of the NHN and individual medical schemes and administrations, as well as agreements that result from the collective bargaining.
3. More specifically, the Commission granted the NHN an exemption from section 4(1)(b)(i) of the Act permitting it 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.
4. In addition to the above exemption, the Commission granted the NHN 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 considered and assessed these three self-standing legs of the exemption separately.

5. The exemption application by NHN relating to all three self-standing legs of the exemption was **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. Exclusion of members who do not meet the legislative criteria “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 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. This information must be submitted to the Commission on an annual basis.*

- 6. On 11 July 2019 the NHN filed an application with the Commission requesting an extension or waiver of Clause 1 of the aforementioned conditions. The premise for the extension application is that the grace period condition requires non historically disadvantaged persons ('HDPs') and non-small business members of the NHN to be compliant by 31 October 2020. In their application the affected NHN members sought

the intervention of the Commission to waive, vary and/or extend the said period to enable the affected members of the NHN sufficient time to be compliant.

7. Notice is therefore given in terms of section 10(7) of the Act that the exemption application granted by the Commission on 1 November 2018 (published in Government Gazette Notice No 42092 of 2018) is hereby **amended** as follows:

- a. The duration of Clause 1 of the Conditions to the Exemption ("**Grace Period Condition**") is extended by 12 (twelve) months to **31 October 2021**.

8. 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.

9. Any queries in this regard should be directed to:

Mr Derrick Bowles / Mr Tlabo Mabye

Market Conduct Division

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