

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1329

11 DECEMBER 2020

NOTICE IN TERMS OF SECTION 10(6) OF THE COMPETITION ACT NO. 89 OF 1998
(AS AMENDED)

THE COMPETITION COMMISSION OF SOUTH AFRICA

NOTICE OF APPLICATION FOR AN EXEMPTION

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No 89 of 1998, as amended (the “**Act**”) that Marang Africa Healthcare Proprietary Limited (“**Marang Health**”) has applied to the Competition Commission (“**Commission**”), in terms of section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act.¹
2. Marang Health is a wholly owned subsidiary of Marang Global Capital Proprietary Limited (Marang Global) that was established in 2015 as a financial advisory firm focusing on healthcare investments, healthcare finance and healthcare asset finance. Marang Health is a private company registered in accordance with the laws of South Africa under registration number 2015/206975/07 and has its principal business address at 1702 Portland Crescent, Dainfern, Johannesburg.
3. The application for the exemption relates to the agreements and/or practices between Marang Health and Mediclinic Southern Africa Proprietary Limited (Mediclinic) under the establishment of an operating company (“OpCo”) which will include the determination and negotiation of tariffs by Mediclinic on behalf of Marang Health and each of the Marang Health Hospitals.
4. Marang Health is requesting permission to:
 - 4.1. Enter into a partnership agreement where Mediclinic obtains a 25% equity stake in the OpCo.
 - 4.2. Have Mediclinic manage and operate the OpCo which includes negotiating and setting tariffs on behalf of Marang Health and each of Marang Health’s hospitals.
5. The above conduct will establish both a horizontal and vertical relationship between them. The exemption is in relation to the horizontal nature of the arrangement as Marang Health and Mediclinic are competitors or potential competitors thus the above conduct may constitute a prohibited practice under s4(1)(b) of the Act. S4(1)(b) of the Act is a *per se* contravention and is therefore incapable of being justified on grounds of efficiency, technological or pro-competitive gains.

¹ Competition Commission case number: 2020Oct0008.

6. Marang Health submits that the above conduct is in line with the objective under section 10(b)(ii) of the Act in that it will promote a greater spread of ownership and more specifically increase the ownership stakes of historically disadvantaged persons.
7. Marang Health submits that the private healthcare sector is highly concentrated with extensive barriers for historically disadvantaged participants to enter and is subsequently characterised by the limited participation of historically disadvantaged individuals in the sector. These barriers include gaining access to capital, land, infrastructure, and equipment costs. Due to the difficulties of accessing capital, smaller players sell their licenses to the larger more established groups who are better positioned to access capital.
8. Through the above conduct, Marang Health suggests that the partnership will facilitate entry into and serve as an innovative way of deconcentrating the highly concentrated and increase expansion of HDIs in the private health care sector.
9. Marang Health seeks an exemption from the Act in relation to the conduct set out in paragraph 4 above, for a period of 10 (ten) years.
10. Notice is hereby given in terms of section 10(6)(b) of the Act to allow interested parties twenty (20) business days from the date of the publication of this notice to make written representations to the Commission as to why the exemption should, or not, be granted.
11. Such representations must be directed to:

Ms Nomalungelo Mthiyane
Competition Commission
Market Conduct Division
Tel: 012 763 8650
Email: NomalungeloM@compcom.co.za.
12. Kindly make use of the following case number when sending correspondences in relation to this notice: **Case No: 2020Oct0008**.