

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3821

25 August 2023

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED): MARANG AFRICA HEALTHCARE PROPRIETARY LIMITED GRANTED CONDITIONAL EXEMPTION**Previous Conditional Exemption 1 June 2021 – 1 December 2022**

1. On 5 October 2020, Marang Healthcare Proprietary Limited (“Marang Health”) filed an application for exemption (“the application”) in terms of section 10(1) of the Competition Act 89 of 1998, as amended (“the Act”) to be exempted from certain provisions of chapter 2 of the Act for a period of 10(ten) years.
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.
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 requested permission to:
 - 4.1. Enter into a partnership agreement where Mediclinic obtains a 25% equity stake in the OpCo; and
 - 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. The exemption sought was for a period of 10 years.
5. In its application, Marang Health relied on the objectives set out in section 10 (3)(b)(ii) of the Act which allows the exemption of agreements and/or practices that promote effective entry into, participation in or expansion within a market by small and medium businesses or firms controlled or owned by HDPs.
6. The Commission’s investigation revealed the following:

- 6.1. The envisaged conduct of Marang Health and Mediclinic would result in a contravention of section 4(1)(b)(i) of the Act.
 - 6.2. There are funding challenges facing Marang Health as a potential new entrant into the private healthcare sector. Furthermore, the Commission considered the importance of access to private healthcare in the township communities and the stringent conditions placed by investors as prerequisites to providing funding.
 - 6.3. The Commission considered the impact of not granting the exemption would have regarding access to quality private health care in the four townships (KwaMashu Durban, Kagiso Johannesburg, Motherwell Port Elizabeth and Khayelitsha Cape Town).
 - 6.4. The Commission remained concerned about some unintended consequences that could occur by granting a long-term exemption without any due consideration of actual agreements at our disposal. Given the history of acquisitions of smaller hospital players by large hospital groups, the Commission remains concerned about incumbent entities taking over running the hospitals for extended period of time. This practice is detrimental to new entrants and limited skills transfer may occur which reverses the grounds on which this exemption is anchored on. Equally, the Commission remained concerned about other practises by established hospital groups such as acquiring hospital licences from new entrants which may not lead to transformation in the private healthcare industry.
 - 6.5. The proposed period of 10 (ten) years was therefore problematic because a) there is no firm agreement between Marang Health and Mediclinic b) currently there is no clear plan that will facilitate Mediclinic's exit after the exemption period and, c) a skills transfer strategy still has to be developed to facilitate Marang Health to take over the hospital operations when the exemption expires. It is therefore appropriate that the Commission took caution by not granting this exemption for a period of 10 years without assessing the agreements. In addition, the Commission requires thorough assessment of any agreements that are entered into with any of the established hospital groups given the concentrated private health care market in South Africa and the history of acquisitions.
7. In light of the above, the Commission granted Marang Health a conditional exemption for 18 months commencing on 01 June 2021 and ending on 01 December 2022 ("**Previous Conditional Exemption**"). The Previous Conditional Exemption was granted based on the information submitted to the Commission by Marang Health and other stakeholders.

Therefore, this exemption does not prevent Marang Health from being investigated and prosecuted under the Competition Act for any conduct outside the scope of the application.

Current Conditional Exemption 09 December 2022 – 10 June 2023

8. The Commission is aware of the difficulties Marang and Mediclinic have encountered during the due diligence process. These difficulties have resulted in delays which meant that Mediclinic has not been able to conclude its due diligence and enter into the final agreements for the Commission to review before 01 December 2022 as required by the Previous Conditional Exemption.
9. The Commission considered the practical issues encountered by the parties in their attempts to comply with the terms of the Previous Conditional Exemption and found that a further 18-month period is appropriate to enable Marang Health to continue engaging in further discussions with Mediclinic and to conclude all the necessary agreements.
10. Accordingly, the Commission grants a conditional exemption on the basis of the same application which was considered and granted on 1 June 2021, for a further period of **18 months from 09 December 2022 to 10 June 2024** to allow for the finalisation of all agreements between Marang Health and Mediclinic. The granting of the Current Conditional Exemption is thus occasioned by the expiration of the Previous Conditional Exemption and the request for an extension by the parties.
11. As part of the Conditions attached to the Current Conditional Exemption, Marang Health is required to submit to the Commission an update report every six months from the date of the granting of this Exemption detailing the progress they have made in compliance with the purpose of the granting of the Current Conditional Exemption, namely, to conclude the due diligence process and finalise the agreements.
12. Accordingly, notice is hereby given in terms of Section 10(7) of the Competition Act regarding the Commission's decision to grant this exemption. The Applicant and any other person with a substantial material interest affected by this decision may appeal it to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act.

13. Further queries should be directed to:

Derrick Bowles

Market Conduct Division

Email: DerrickB2@compcom.co.za

14. Kindly refer to the following case number: **2020Oct0008** when sending correspondences in relation to this Notice.