

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 4128

1 December 2023

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF
1998 (AS AMENDED)

THE COMPETITION COMMISSION OF SOUTH AFRICA

EXTENSION OF THE CONDITIONAL EXEMPTION GRANTED TO THE
NATIONAL HOSPITAL NETWORK

1. On 8 August 2017, the National Hospital Network filed an exemption application with the Competition Commission ("**the Commission**") in terms of section 10(3)(b)(ii) of the Competition Act No. 89 of 1998, as amended ("**the Act**"). The conduct for which the exemption was sought related to the collective bargaining between the shareholders of the NHN and individual medical schemes and administrators, as well as agreements that resulted from the collective bargaining.
2. The Commission published a Notice of the conditional granting of the 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 Act read with Rule 19(5) of the Rules of Conduct of Proceedings in the Commission.
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 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 the NHN relating to all three self-standing legs was granted by the Commission for a period of five (5) years commencing on **1 November 2018** and ending on **31 October 2023**.
6. On 27 September 2023, the NHN filed a new exemption application on behalf of its members for a period of five (5) years commencing on the date of approval of the application by the Commission. The scope of the NHN's most recent exemption application included a request that its previous exemption from section 4(1)(b)(i) of the Act be extended and that it be permitted to continue to engage in collective bargaining arrangements on behalf of its members and individual medical schemes and administrators, as well as agreements that result from the collective bargaining. Further, the NHN requested to be permitted to continue 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 centralized procurement.
7. In addition, the NHN requested that its exemption, which was set to expire on **31 October 2023** be extended to allow for assessment of its new exemption application. After due consideration of the request from the NHN, the Commission has decided to extend the NHN's exemption by a period of six (6) months starting from **1 November 2023** ending **30 April 2024**. The conditions applicable to the exemption expiring on 31 October 2023 will remain the same.
8. Notice is hereby given in terms of Section 10(7) of the Competition Act regarding the Commission's decision to grant the extension of this exemption. The Applicants and any other person with a substantial material interest affected by this decision may appeal to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act. Any queries in this regard should be directed to:

Dr Thabang Ndlovu

Competition Commission

Market Conduct Division

Email: ThabangN@compcom.co.za

Mr Tlabo Mabye

Competition Commission

Market Conduct Division

Email: TlaboM@compcom.co.za

9. Kindly make use of the following case number when sending correspondence in relation to this notice: Case No: **2017AUG0022**.

**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 BY THE NATIONAL HOSPITAL
NETWORK - 2023SEP0040**

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 the National Hospital Network ("**NHN**") has applied to the Competition Commission ("**the Commission**") in terms of section 10(1) of the Act, for exemption from certain provisions of Chapter 2 of the Act in order to engage in conduct that would be in contravention of the Act. The exemption requested is for a period of five (5) years.
2. The NHN is a non-profit company registered in terms of the Companies Act, 2008, comprising of a group of independent member private hospitals through which it is controlled. In the NHN's context, independent relates to membership in the NHN that is limited to private hospitals which are not 'owned' or 'controlled' by any of the big three (3) hospital groups consisting of Mediclinic Southern Africa, the Netcare Hospital Group, and Life Healthcare.
3. The NHN was established as a response to the competition imbalance between the independent private hospital market on the one hand, and the three large hospital groups on the other. This is the fifth exemption application since the first exemption was granted by the Commission on 15 June 2006.
4. The NHN requests an exemption to engage in the following activities on behalf of its members with medical schemes and/or medical scheme administrators:
 - 4.1. NHN's members shall agree collectively to implement the prices negotiated and entered into on their behalf by the NHN with medical schemes and medical scheme administrators;

- 4.2. 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;
 - 4.3. Engage on behalf of its members in global fee negotiations with medical schemes, administrators, the State and healthcare providers (professional associations); and
 - 4.4. To undertake collective or centralised procurement on behalf of its members.
5. The NHN is of the view that the exemption sought will achieve the following objectives:
 - 5.1. Promote the effective entry, participation or expansion of small and medium businesses, or firms controlled or owned by historically disadvantaged persons in line with section 10(3)(b)(i) of the Act; and/or
 - 5.2. Achieve competitiveness and efficiency gains that promote employment or industrial expansion in line with section 10(3)(b)(i) of the Act.
6. The NHN submits that there is a need for a further exemption because large hospital groups assume group administration responsibility for the centralised performance of certain functions and operations of their group hospitals, such as:
 - (i) tariff negotiations with medical schemes; (ii) collation of group hospital data; (iii) group-wide initiatives to promote efficiency, quality of healthcare, and funding; and (iv) the maintenance of standards, and training. To this end, independent private hospitals on their own lack the resources and capability to give effect to what is required to be competitive.
7. 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 publication of this notice to make written representations to the Commission as to why the exemption should, or not, be granted. Such representations must be directed to:

Dr Thabang Ndlovu

Competition Commission

Market Conduct Division

Email: ThabangN@compcom.co.za**Mr Tlabo Mabye**

Competition Commission

Market Conduct Division

Email: TlaboM@compcom.co.za

8. Kindly make use of the following case number when sending correspondence in relation to this notice: Case No: **2023SEP0040**.