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**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. 5022

5 July 2024

**THE COMPETITION COMMISSION OF SOUTH AFRICA****NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED) – THE NATIONAL HOSPITAL NETWORK CONDITIONAL EXEMPTION GRANTED****NATIONAL HOSPITAL NETWORK - 2023SEP0040**

1. On **27 September 2023**, the National Hospital Association (“**the NHN**”) and its members, hereinafter referred to as (“**the Applicants**”) filed an application for an exemption (“**the Application**”) in terms of Section 10(3)(b)(ii) of the Competition Act No 89 of 1998, as amended (“**the Competition Act**”). The NHN’s application related to the category of agreements and/or practices concluded by its members who are in a horizontal relationship.
2. The NHN is a non-profit organization registered in terms of the Companies Act 71 of 2008. Its members are independent private hospitals. 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 Mediclinic South Africa, the Netcare Hospital Group and Life Healthcare.
3. In their Application, the Applicants relied on the objectives set out in Section 10(3)(b)(ii) of the Competition Act which allows an exemption of agreements and/or practices that promote the effective entry into, participation in or expansion within a market by small medium businesses, or firms controlled or owned by historically disadvantaged persons.
4. The Applicants submitted that the practices sought to be implemented contravene Section 4(1)(b) of the Competition Act since they operate as competitors in the provision of hospital services.

5. The NHN has requested the Competition Commission (“the Commission”) to grant an exemption for the period of five years to allow for the implementation of the following practices:

5.1. The members of the NHN shall agree to collectively implement the prices negotiated and agreed on their behalf by the NHN, with medical schemes and medical scheme administrators;

5.2. The NHN shall engage on behalf of its members in global fee negotiations with medical schemes, administrators, the State and healthcare providers (professional associations);

5.3. The NHN shall undertake collective or centralised procurement on behalf of its members; and

5.4. The NHN shall 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.

6. On 1 December 2023, the Commission published a Government Gazette Notice pertaining to the NHN’s exemption application in accordance with Section 10(6) of the Competition Act, read with Rule 19(4) of the Rules of Conduct of Proceedings in the Competition Commission (“the Rules”). The Notice stated that the conduct sought may amount to prohibited practices in contravention of Section 4 of the Competition Act. The Notice also called upon interested parties to make written representations to the Commission within twenty (20) business days of publication as to why the exemption should or should not be granted.

7. The submissions received from interested parties were considered in the assessment of the NHN’s exemption application.

8. The Commission’s investigation revealed that:

8.1. the conduct of the NHN’s members would result in a contravention of Section

4 of the Competition Act;

8.2. the exemption if granted, may achieve the objectives of Section 10(3)(b)(ii) of the Competition Act.

9. After consideration of the exemption application, the Commission has decided to grant the NHN a conditional exemption for a period of five (5) years, commencing from **1 June 2024** and ending on **31 May 2029**. The exemption will be subject to monitoring mechanisms which the Commission has put in place to ensure that the objectives set out in the application are met by the exemption. The Conditions and Monitoring Mechanisms are attached below as **Annexure A**.

10. Notice is hereby given in terms of Section 10(7) of the Competition Act regarding the Commission's decision to grant this exemption. The Applicants and any other person with a substantial material interest affected by this decision may lodge an appeal to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act.

11. Further queries concerning this Notice should be directed to:

**Dr Thabang Ndlovu**

Competition Commission South Africa

Market Conduct Division

Email: [ThabangN@compcom.co.za](mailto:ThabangN@compcom.co.za)

**Mr Tlabo Mabye**

Competition Commission South Africa

Market Conduct Division

Email: [TlaboM@compcom.co.za](mailto:TlaboM@compcom.co.za)

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

## ANNEXURE A: EXEMPTION CONDITIONS

### Preamble

The exemption is granted to the National Hospital Network (“NHN”) for a period of **five years** starting from **1 June 2024** and ending on **31 May 2029** subject to the conditions listed below.

The conditions only apply for the purpose and duration of the exemption. The exemption is in respect of a collective bargaining arrangement between the members of the NHN and individual medical schemes and/or administrators, as well as agreements that result from the collective bargaining.

The NHN has requested exemption from section 4(1)(b)(i) of the Act for a period of five (5) years in order to engage in the following activities with medical aid schemes and/or medical scheme administrators on behalf of its members:

1. The members of the NHN shall agree to collectively implement the prices negotiated and agreed on their behalf by the NHN, with medical schemes and/or medical scheme administrators;
2. The NHN shall engage on behalf of its members in global fee negotiations with medical schemes, administrators, the state and healthcare providers (professional associations);
3. The NHN shall undertake collective or centralised procurement on behalf of its members; and
4. The NHN shall 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.

The exemption is meant to achieve the objectives of section 10(3)(b)(ii) of the Act which reads “*promotion of the effective entry into, participation in or expansion within*

*a market by small and medium businesses, or firms controlled or owned by historically disadvantaged persons”.*

### **Conditions**

1. Large members of the NHN (i.e. members that do not qualify as either a firm owned or controlled by a historically disadvantaged person (“**HDP**”) and/or small, micro and medium enterprise (“**SMME**”)) shall commit to taking active steps in achieving overall transformation including ownership structures to enhance participation of HDPs in their facilities.
2. Large members of the NHN shall commit to procuring a proportion of their centralised procurement spend from BBBEE entities in line with the targets set out in Table 1 below.
3. Large members of the NHN shall commit to mobilising resources for expanding the existing human capital pool through investing in people, employment equity, skills development and institutional transformation in line with the targets set out in Table 1 below.

Table 1: Targets to be achieved by large members of the NHN

Target Number	Element	Indicator	Measurement Criteria	Compliance Target	Target for Year 1 of the Exemption	Target for Year 2 of the Exemption	Target for Year 3 of the Exemption	Target for Year 4 of the Exemption	Target for Year 5 of the Exemption
1	Ownership or Management.	Voting Rights.	Exercisable Voting Rights in the Entity in the hands of Black people.	55%	35%	40%	45%	50%	55%
		Board Participation.	Exercisable voting rights of black board members as a percentage of all board members.	50%	10%	20%	30%	40%	50%
			Black Executive directors as a percentage of all executive directors.	50%	10%	20%	30%	40%	50%
2	Employees with disabilities.	Participation.	Black employees with disabilities as a percentage of all employees.	2%	1%	2%	2%	2%	2%
3	Enterprise & supplier development.	Preferential Procurement.	Procurement Spend on the BBBEE entities as a percentage of Total Measured Procurement Spend.	50%	10%	20%	30%	40%	50%
4	Skills Development.	Skills Development Expenditure.	Procurement Spend on the BBBEE entities owned by black females as a percentage of Total Measured Procurement Spend.	15%	5%	10%	15%	15%	15%
			Skills Development Expenditure (learning programmes) on black people as a percentage of total expenditure on Learning Programme.	6%	2%	4%	6%	6%	6%
			Skills Development Expenditure (learning	2%	1%	1.5%	2%	2%	2%

[illegible]

### *Global Fees*

4. The NHN must ensure that it implements its global fees arm of the exemption. The NHN when entering into global fee arrangements should undertake to adhere to the following conditions:
  - a. Carve-outs or exclusions from this specific alternative reimbursement method shall be limited and global fees shall be negotiated on the premise of full risk sharing between the medical aid schemes 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.

### *Alternative Re-Imbursement Models*

5. The NHN must implement a plan and/or policy that will promote the move from fee for service cost models between funders and facilities towards Alternative Re-Imbursement (**“ARM”**) contracting.
6. The NHN shall be required, as part of its general annual reporting condition discussed below, to report to the Commission on the progress made on implementing ARMs contracting and/or submit ARM contracts that were negotiated annually.

### *Centralized Procurement*



7. The NHN must ensure that it implements its centralised procurement arm of the exemption at the benefit of its members. The NHN shall be required, as part of its general annual reporting condition to report to the Commission on the progress made on implementing its central procurement arm of the exemption.

### **Annual Submission of Information**

1. The 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. The information to be submitted to the Commission may be in table format and must include the following:
  - a. Full details on the number of global fee arrangements the NHN has contracted. This must include but not be limited to the following:
    - i. The parties to the agreement;
    - ii. The structure of the agreement including full details on the risk sharing between funders and providers;
    - iii. The carve-outs or specific exclusions from the global fee arrangement as well as justification for why the carve-outs are necessary;
    - iv. Clearly defined quality metrics which are applicable to the agreements; and
    - v. Copies of all agreements.
  - b. New members that joined;
  - c. Geographic location of each NHN member;
  - d. Type of hospital (i.e. acute, sub-acute, day clinic);
  - e. The number of employees of each NHN member;
  - f. The number of NHN members that are part of any Designated Service Provider arrangements concluded with medical schemes and/or administrators;
  - g. The number of NHN members that qualify as Historically Disadvantaged Persons in terms of section 3(2) of the Act;

- h. The number of NHN members that qualify as small businesses. This includes NHN members who meet each individual requirement and NHN members who meet the collective requirements:
  - i. The number of new facilities opened by each NHN member and/or expansion through an increase in the number of hospital beds; and
  - j. The expansion of product and/or service offering to patients by each NHN member and the name of the product and/or service.
- 2. In addition to the above, the 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. The services to be provided to the aforementioned members must include but not be limited to:
  - a. High level feedback providing insight into industry trends and economic factors which may affect the operation of the members facilities;
  - b. Detailed feedback on Alternative Reimbursement Models (“ARMs”) entered into with medical schemes and the constitution of such ARMs enabling member facilities to better manage the costs of the procedure and maximise profits;
  - c. Detailed feedback on the progress made on its central procurement arm of the exemption.
  - d. Feedback and training on the tools available to assist in managing facilities optimally;
  - e. Assistance and training on submission of claims and support on technical claims issues;
  - f. Detailed feedback and training on managing cost efficiencies and quality control measures including benchmarking; and

- g. Operational meetings held with medical schemes and/or administrators in which problem areas and/or trends are identified and discussed and approaches to resolve any issues are concluded.

The above-mentioned services are to be provided to members through one or combination of the following platforms:

- i. Regular workshops hosted by the NHN;
  - ii. Information manuals provided to members;
  - iii. Onsite training sessions held at the facilities of the members;
  - iv. Newsletters produced by the NHN; and
  - v. Email and telephonic support made available to members and their staff members.
3. The NHN must provide on an annual basis, data and/or information pertaining to compliance of targets set for its large members.
4. The NHN must implement measures to track the number of members whose competitiveness has improved because of the implementation of the aforementioned conditions. The information must be submitted to the Commission on an annual basis.
5. The compliance report(s) must be submitted to the following email address [exemption.conditions@compcom.co.za](mailto:exemption.conditions@compcom.co.za)

### **Variation Clause**

1. Notwithstanding the aforementioned conditions, the Commission may at any time upon good cause shown decide to vary or revise any condition during the period of the exemption.