

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5161

30 August 2024

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

THE COMPETITION COMMISSION OF SOUTH AFRICA

APPLICATION FOR AN EXEMPTION BY THE SOUTH AFRICAN
SOCIETY OF PHYSIOTHERAPY- 2024JUL0037

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No. 89 of 1998, as amended ("the Competition Act") that the South African Society of Physiotherapy ("SASP") has on behalf of all its members, applied to the Competition Commission ("the Commission") in terms of section 10(1) of the Competition Act, for exemption from certain provisions of Chapter 2 of the Competition Act in order to engage in conduct that would be in contravention of the Competition Act. The exemption requested is for a period of five (5) years.
2. The SASP is a voluntary professional membership association registered as a non-profit organisation under the Nonprofit Organisations Act of 1997 and a public benefit organisation under the Income Tax Act of 1962. It is the representative body of physiotherapist members, registered and regulated by the Health Professions Council of South Africa ("HPCSA") and exclusively constituted by physiotherapists.
3. The SASP applied to the Commission for its members to collectively engage with medical schemes, medical scheme administrators, state and private hospitals, suppliers and other service providers in:
 - 3.1. coding arrangements;
 - 3.2. collusion on setting price/tariffs in the form of RVUs;
 - 3.3. global-fee negotiations; and
 - 3.4. engaging in centralised procurement; a process where the SASP, on behalf of its members, negotiates and purchases goods and services in bulk, potentially leading to cost savings and improved efficiency.
4. The SASP submits that its application is a response by independent physiotherapists under the SASP grouping to not only collectively ensure that access to healthcare is practically realised, but also to protect the interests of physiotherapists which exercise absolutely no bargaining power in determining both price and non-price factors in their practices.

5. The SAPS further submits that physiotherapists are predominantly price-takers in their dealings with medical schemes and medical scheme administrators which actually control the manner and method of reimbursement for professional services rendered.
6. The exemption application is two-pronged. First, the application is brought in terms of section 10(3)(b)(ii) of the Competition Act. Secondly, and in the alternative, the exemption application is brought on grounds under section 10(3)(b)(v) of the Competition Act. The Commission is urged to exempt from Chapter 2 of the Competition Act the 'agreement(s)' or 'practice(s)' contemplated in the exemption application, which the SASP believes and anticipates will contribute to the:
 - 6.1. promotion of the effective entry, participation or expansion of small and medium businesses, or firms controlled or owned by historically disadvantaged persons in the private healthcare services market; and
 - 6.2. objectives of competitiveness and efficiency gains that promote employment or industrial expansion.
7. The SASP members are competitors or potential competitors in the market for provision of physiotherapy services. Accordingly, the conduct(s) set out in the exemption application may constitute a prohibited practice and contravention of section 4(1)(b)(i) of the Competition Act, which is a per se contravention of the Competition Act and, therefore, with no defence on efficiency, technological or pro-competitive grounds.
8. Notice is hereby given in terms of section 10(6)(b) of the Competition 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 should not, be granted.
9. All representations, queries and submissions must be directed to:

Ms M Keleme/ Ms B Bhekiswayo/ Mr T Mabye
Competition Commission South Africa
Market Conduct Division
Private Bag X23
Lynnwood Ridge
0040

Email : **MamontshiK@compcom.co.za** / **BandileB@compcom.co.za** /
TlaboM@compcom.co.za

10. Kindly make use of the following case number when sending correspondence in relation to this notice: 2024JUL0037.