

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

## NOTICE 2940 OF 2025

## COMPETITION COMMISSION SOUTH AFRICA

## NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)

REFUSAL TO GRANT AN EXEMPTION TO THE BOARD OF HEALTHCARE FUNDERS:  
2021DEC0045

1. On 20 December 2021, the Board of Healthcare Funders (“**BHF**”) applied to the Competition Commission of South Africa (“**the Commission**”) in terms of Section 10(1) of the Competition Act, No. 89 of 1998, as amended (“**the Competition Act**”), which allows a firm to apply to the Commission to exempt an agreement, a practice, and a category of agreements from the provisions of Chapter 2 of the Competition Act. The BHF is a voluntary representative association in the medical schemes industry. Its members include medical schemes, administrators and managed care organisations throughout the Southern African region, with membership in Lesotho, Zimbabwe, Namibia, Botswana, Malawi and Swaziland.
2. The BHF filed the application on behalf of its members requesting to be exempted from the provisions of Section 4 of Chapter 2 of the Competition Act to enable it and its members to engage collectively in relation to the following agreements and/or practices:
  - 2.1. Publish a Recommended Scale of Benefits (reference price list for healthcare services) developed by BHF and its members;
  - 2.2. Collectively negotiate with all healthcare service providers with respect to pricing, Prescribed Minimum Benefits (“**PMBs**”) and quality of services;
  - 2.3. Collaborate on and publish Health Technology Assessments (“**HTAs**”) research outcomes; and
  - 2.4. To make collective submissions to regulators and government bodies on behalf of its members.
3. The BHF submitted that the agreement and/or practices sought will result in:
  - 3.1. a change of productive capacity necessary to stop the decline in the industry, in line with Section 10(3)(b)(iii) of the Competition Act; and

- 3.2. competitiveness and efficiency gains that would promote the expansion of the medical schemes industry, in line with Section 10(3)(b)(v) of the Competition Act.
4. On 6 May 2022, the Commission published a Government Gazette Notice pertaining to the BHF'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.
5. The submissions received from interested parties were considered in the assessment of the BHF's exemption application.
6. Notice is therefore given in terms of Section 10(7) of the Competition Act that the exemption application filed by the BHF has been rejected by the Commission due to the following reasons:
- 6.1. The Commission's investigation revealed that the members of the BHF are actual competitors in relation to the provision of medical scheme services and that the practices sought in the exemption application will result in contravention of Section 4(1)(b)(i) and/or Section 4(1)(a) of the Competition Act. However, the Commission could not find sufficient and/or clear evidence to prove that the practices sought by the BHF meet the objectives of Section 10(3)(b)(iii) of the Competition Act.
- 6.2. The investigation revealed that the medical schemes industry faces some challenges, such as (i) the reduction in the number of medical schemes, (ii) high healthcare costs, (iii) health practitioners' ability to charge any fee they deem appropriate, resulting in patients having to pay out of their pockets when receiving healthcare services; (iv) and increase in expenditure on PMBs by medical schemes. Nevertheless, there are positive industry trends that suggest that the medical schemes may be relatively stable. These include an increased number of beneficiaries covered by medical schemes, a stable age profile, and the industry's ability to adhere to the 25% solvency requirements. The Commission found that there is not sufficient evidence submitted

by the BHF and/or gathered by the Commission to demonstrate that the medical schemes industry is in decline.

- 6.3. The Commission also could not find sufficient and/or clear evidence to prove that the practices sought by the BHF meet the objectives of Section 10(3)(b)(v) of the Competition Act. The Commission found that there was no clear evidence demonstrating how the sought practices would contribute to the promotion of employment and/or industrial expansion.
7. The BHF 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.
8. Further queries concerning this Notice should be directed to:

**Mr. Thulani Nhlabathi, Ms Mamontshi Keleme and Mr. Tlabo Mabye**

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9. Kindly make use of the following case number when sending correspondence in relation to this Notice: **2021Dec0045**