
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NOTICE 3359 OF 2025

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

COMPETITION COMMISSION SOUTH AFRICA

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

1. On 27 July 2024, the South African Society of Physiotherapy ("SASP"), on behalf of all its members, filed an application for an exemption in terms of Section 10(1) of the Competition Act 89 of 1998, as amended ("**the Competition Act**"), which allows a firm to apply to the Competition Commission ("**the Commission**") to exempt an agreement, a practice, and a category of agreements from the provisions of Chapter 2 of the Competition Act.
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 prices/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 relied on the objectives set out in Sections 10(3)(b)(ii) and 10(3)(b)(iv) of the Competition Act, which allow an exemption of agreements and/or practices that promote the ability of small businesses or firms controlled or owned by historically disadvantaged individuals ("**HDIs**") to become competitive; and to ensure competitive and efficiency gains that promote employment or industrial expansion – respectively.
5. The exemption was requested for a period of five (5) years.

6. On 30 August 2024, the Commission published a Government Gazette Notice pertaining to the exemption application filed by the SASP 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. Submissions from interested parties were considered during the assessment of SASP’s exemption application.
8. The Commission has completed its investigation and has come to the following findings:
 - 8.1. The Commission’s investigation revealed that the conduct of SASP members would result in contravention of Section 4 of the Competition Act, as the application relates to information exchange agreements and/or practices between parties in a horizontal relationship. The Commission also established that 100% of SASP’s members qualify as either small or medium enterprises provided for by the relevant provisions in the NSB Act, read together with the revised schedule, and that 25% of establishments of its’ total membership is owned and operated by HDIs.
 - 8.2. Regarding collective bargaining, billing codes, and global fees, the Commission found no evidence indicating that the absence of collective bargaining on tariffs, billing codes, and global fees in the physiotherapy market has impeded the participation of physiotherapists (small, medium, and micro enterprises (SMMEs) or firms previously owned by HDIs). No evidence was found indicating that physiotherapists are price-takers or have no bargaining power in the healthcare industry. The investigation revealed that granting an exemption to SASP will limit competition in the market and result in tariffs that are above competitive levels, which will be detrimental to consumers. Additionally, several stakeholders have expressed their objections to granting an exemption to SASP, citing concerns about the potential impact on market competition and the risk of consumer harm. As a result, the Commission has decided to reject the SASP exemption application in respect of collective bargaining, billing codes, and global fees.

8.3. Concerning centralised procurement, the Commission found that if exempted, this practice would enable the SASP to negotiate better terms with manufacturers and distributors of the consumables used by its members. The Commission is of the view that collective procurement could help the SASP members secure lower prices and demand higher quality standards from suppliers, ultimately promoting overall efficiency. The benefits may extend beyond cost savings and improved quality and positively impact patients receiving physiotherapy services. As a result, the Commission has decided to grant SASP a conditional exemption relating to centralised procurement for a period of five (5) years, commencing from 1 April 2025.

9. Notice is therefore given in terms of Section 10(7) of the Competition Act that the Commission has decided to:

9.1. reject an exemption application filed by the SASP in respect of collective bargaining, billing codes and global fee negotiations; and

9.2. approve an exemption application filed by the SASP regarding centralised procurement. The conditional exemption relates to centralised procurement for a period of 5 (five) years, commencing on 1 April 2025 and ending on 31 March 2030.

10. The exemption, as it relates to centralised procurement, will be subject to monitoring mechanisms that the Commission has put in place to ensure that the exemption meets the objectives set out in the application. The Conditions and Monitoring Mechanisms are outlined below.

11. In terms of Section 10(8) of the Competition Act, the SASP or any other person with substantial financial interest affected by the Commission's decision may appeal it to the Competition Tribunal in the prescribed manner.

12. All representations, queries and submissions must be directed to:

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

Email: MamontshiK@compcom.co.za and TlaboM@compcom.co.za

13. Kindly use this case number - 2024JUL0037, when sending correspondence concerning this Notice.

ANNEXURE A: EXEMPTION CONDITIONS AND MONITORING MECHANISMS

The Exemption in relation to Centralised Procurement is granted for a period of five (5) years effective from 1 April 2025 up to and including 31 March 2030, subject to the following conditions:

Definitions

The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings –

“**SASP**” means the South African Society of Physiotherapy or the Applicants in the current exemption application.

“**Approval date**” means the date referred to in the Competition Commission’s Clearance Certificate.

“**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act 89 of 1998 (as amended) with its principal place of business at Block C, Mulayo Building, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria.

“**Competition Act**” means the Competition Act 89 of 1998, as amended.

“**Effective Date**” means the date on which these conditions shall become effective, being 1 April 2025.

“**Exemption**” means to pardon conduct otherwise prohibited if it is required to achieve identified socio-economic aims.

1. Preamble

- 1.1. The SASP has requested an exemption in terms of Section 4(1)(b)(i) of the Competition Act for a period of five (5) years.
- 1.2. The conditions below only apply for the purpose and duration of the Exemption. The exemption applies only to agreements relating to centralised procurement.
 - 1.2.1. The exemption permits the SASP to engage in centralised procurement on behalf of its members.
 - 1.2.2. Centralised procurement will be conducted through a request for proposal to suppliers for the discipline-related cost basket in exchange for participation on the preferred provider list.
- 1.3. The exemption is meant to achieve the objectives (i) of Section 10(3)(b)(ii) of the Competition 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*”; and (ii) Section 10(3)(b)(v) of the Competition Act which reads “*competitiveness and efficiency gains that promote employment or industrial expansion*”.

2. Conditions

- 2.1. The SASP shall ensure that it maintains an open membership policy for all interested parties who meet the established minimum criteria for membership, without discrimination based on race, gender, age, or background. The membership requirements of the SASP must be accessible publicly.
- 2.2. The SASP shall establish an appeal body to handle its appeal application processes (i.e., a membership appeals body).
- 2.3. The SASP and its members shall implement measures to achieve transformation in the field of physiotherapy. This will be done by implementing mentorship programs that enable experienced professionals to train and support new entrants.
- 2.4. The SASP and its members shall commit to taking active steps in promoting overall transformation, including the membership structure, to enhance the participation of HDPs in the industry in line with the set targets.

- 2.5. The SASP and its members must work to broaden their services and ensure they reach people in underserved and lower-income communities.
- 2.6. The SASP and its members shall commit to procuring a proportion of their centralised procurement spend from BBBEE entities. The SASP will endeavour to identify the relevant suppliers from which to procure.
- 2.7. The SASP shall keep a record of the actual cost savings (in Rand terms) achieved from centralised procurement.
- 2.8. The SASP shall keep a record of the portion of cost savings (in Rand terms and as a percentage of the total cost savings) that have been passed on to consumers and/or medical aid beneficiaries.

3. Annual Submission of Information

- 3.1. The SASP is required to submit a Report to the Commission by the end of April annually, commencing on 30 April 2026. This will enable the Commission to monitor the impact of the measures taken to meet the objectives relied upon and to assess whether the SASP is meeting those objectives on an on-going basis.
- 3.2. The information to be submitted to the Commission must include the following:
 - 3.2.1. A list of members whose competitiveness improved since the commencement of centralised procurement and a breakdown of how that improvement occurred;
 - 3.2.2. A breakdown of cost savings for each member, submitted in a fully collated format on an Excel Spreadsheet and indicating the improvement in costs in relation to the purchasing of products and/or equipment utilised in physiotherapy practices;
 - 3.2.3. A detailed description of how centralised procurement has created opportunities and incentives for products required in physiotherapy practices to be manufactured and purchased locally. This includes the products not manufactured and/or sourced locally, absent the exemption;

- 3.2.4. Explanation and data of (i) all cost savings derived from centralised procurement undertaken by the SASP; and (ii) cost savings (expressed in Rand terms and as a percentage of the total cost savings) that have been passed down to consumers and/or medical aid beneficiaries; and
 - 3.2.5. Supporting data (i.e. details of BBBEE entities and procurement figures) demonstrating compliance with targets.
- 3.3. The SASP is also required to provide a detailed report to the Commission on an annual basis. The information included in this report can be organised in a clear and informative table format:
- 3.3.1. Number of physiotherapists that have applied for membership of the SASP;
 - 3.3.2. Number of applicants that were accepted as members of the SASP;
 - 3.3.3. Number of applicants that were rejected as members of the SASP;
 - 3.3.4. Reasons for rejecting each application;
 - 3.3.5. Number of applicants that applied for appeal of the SASP's decision of rejecting their membership application;
 - 3.3.6. The outcomes of each appeal application;
 - 3.3.7. Number of physiotherapists that have left the SASP; and
 - 3.3.8. The reasons provided by each member for leaving the SASP.
- 3.4. Given that the SASP members are competitors and that participation in this exemption by the SASP members is voluntary, the SASP is required to report annually on the number of members who participated in negotiations and those who elected to opt-out.
- 3.5. The SASP must submit information demonstrating how the Exemption has resulted in the following:
- I. Employment and expansion of historically disadvantaged persons;
 - II. Growth and sustainability of the sector; and
 - III. Number of physiotherapists serving the unserved communities.

4. Variation Clause

- 4.1 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.