

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1102

13 OCTOBER 2017

**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**

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 (“**Commission**”), in terms of section 10(1) of the Act, for the extension of its current exemption from certain provisions of Chapter 2 of the Act. In addition to the extension of its current exemption, the NHN seeks a further exemption from the Act.<sup>1</sup>
2. NHN is a non-profit company duly registered under the Companies Act, 2008, incorporated as a co-operative venture and controlled by its members, a group of independent private hospitals.<sup>2</sup>
3. The application for the exemption is in respect of a collective bargaining arrangement between the shareholders of NHN and individual medical schemes and administrations, as well as agreements that result from the collective bargaining.
4. NHN has requested from the Commission, that its current exemption from section 4(1)(b)(i) of the Act be extended and that it be permitted 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

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<sup>1</sup> Competition Commission case number 2017AUG0020.

<sup>2</sup> Independent in the context of this exemption application means, hospitals not owned or controlled by one of the three large hospital groups, that is Netcare Holdings, Life Health Group and Medi-Clinic.

- 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.
5. In addition to the above exemption, the NHN seeks 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.
6. NHN's members are competitors or potential competitors in the market for the provision of hospital services. Accordingly, the above conduct may constitute a prohibited practice in contravention of section 4(1)(b)(i) which is a *per se* contravention of the Act and therefore incapable of being defended on efficiency, technological or pro-competitive grounds.
7. NHN submits that the above conduct is necessary to attain the objective stipulated under section 10(3)(ii) of the Act, in that it contributes to the objective of promoting the ability of small business and also firms owned or controlled by historically disadvantaged persons to become competitive.
8. It is noted that NHN has been operating under exemptions granted by the Commission in terms of section 10(3)(b)(ii) of the Act on three (3) occasions<sup>3</sup>. The last of these exemptions lapses on 31 December 2017. The Commission found that the agreements negotiated and entered into by NHN constitute a contravention of section 4(1)(b)(i) of the Act. However, the Commission exempted the conduct as it was found to be necessary to attain the objective stipulated under section 10 (3)(ii) of the Act.
9. NHN is requesting the Commission to further exempt the aforementioned collective conduct of its members for another 5 (five) years, ending 31 December 2022. In addition to the extension of its current exemption, the NHN

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<sup>3</sup> Case no: 2003Nov717, Notice 775 published in Gazette 28924 of 15 June 2006; 2008Oct4076, Notice 417 published in Gazette 33192 of 21 May 2010, and 2014Oct####, Notice No. 38059 of 31 January 2014.

seeks a further exemption from the Act in relation to the conduct set out in paragraph 5 above, for a period of 5 (five) years ending 31 December 2022.

10. 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 the publication of this notice to make written representations to the Commission as to why the exemption should, or not, be granted.

11. Such representations must be directed to:

**Derrick Bowles**

Competition Commission

Enforcements and Exemptions Division

Tel: 012 762 6917

Email: [DerrickB2@compcom.co.za](mailto:DerrickB2@compcom.co.za).

12. Kindly make use of the following case number when sending correspondences in relation to this notice: Case No: **2017AUG0020**.