

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2066

6 May 2022

NOTICE IN TERMS OF SECTION 10(6) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)

THE COMPETITION COMMISSION OF SOUTH AFRICA

BOARD OF HEALTHCARE FUNDERS (2021DEC0045)

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 Board of Healthcare Funders of Southern Africa ("the BHF") has applied to the Competition Commission ("the Commission"), in terms of Section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act.
2. The BHF is a representative association in the medical schemes industry and has a number of medical schemes as members. BHF is not the only representative association for medical schemes in South Africa but does have a substantial portion of schemes as members. BHF is not itself a medical scheme. BHF's principal place of business is Lower Ground Floor, South Tower, 1Sixty Jan Smuts, Jan Smuts Avenue, cnr Tyrwhitt Ave, Rosebank, Johannesburg 2196.
3. Around 2008, the BHF applied for an exemption in terms of section 10 of the Act, to enable medical aid schemes to engage collectively in relations to certain concerted practices including but not limited to, sharing and publication of information including prices and costs, collective submissions to the state and collective bargaining for medical materials, medicines and devices. The Commission rejected the exemption application on the grounds that it was not provided with any evidence that suggests that the exemption will yield benefits that outweigh the proposed restriction in competition, that the medical schemes industry is experiencing a decline instead information suggested that the industry is relatively healthy and the industry was not designated by the Minister as required by the Act.¹
4. The BHF submitted that the medical scheme industry has changed since the first exemption application. The BHF submitted that the following issues, amongst others, are currently faced by the medical aid schemes and the medical scheme industry:

¹ Notice in terms of section 10(7) of the Competition Act 89 of 1998, rejecting the BHF exemption application - https://www.gov.za/sites/default/files/gcis_document/201409/326321370.pdf

- 4.1. Medical aid schemes and their beneficiaries are struggling with the high cost of health care in the private sector for reasons identified in the Final Findings and Recommendations Report of the Health Market Inquiry published by the Commission in September 2019.²
 - 4.2. The BHF is of the view that regulatory failures and inadequate level of stewardship over the private health care sector for the last fifteen to twenty years have created runaway prices on the supply side contributed by their unregulated position as far as the prices they may charge are concerned.
 - 4.3. Medical aid schemes are significantly disadvantaged by the strict, rules-based and inflexible regulatory approaches of the Council for Medical Schemes (“CMS”). Consequently, they have been severely hampered in their ability to exert downward pressure on the prices of health care services, keep contribution increases to a minimum and come up with innovative cost-effective benefit packages that will promote competition between them and appeal to a wider audience.
 - 4.4. The CMS and the National Department of health have not reviewed the prescribed minimum benefits package in a meaningful way over the past twenty years.
 - 4.5. Smaller medical aid schemes do not have the necessary bargaining power necessary to negotiate prices that are fair and reasonable on behalf of their beneficiaries.
5. The BHF seeks an exemption in respect of the following potentially anti-competitive practices and agreements (currently prohibited by the Act):
 - 5.1. In collaboration with its members, the BHF intends to publish a Scale of Benefits, which would serve as a reference price list that medical schemes, providers and consumers can use to make informed choices in benefit design, individual fee negotiations, what tariffs are considered reasonable and whether or not to use a particular health care provider.

² Final Findings and Recommendations Report of the Health Market Inquiry pages <http://www.compcom.co.za/wp-content/uploads/2018/07/Health-Market-Inquiry-1.pdf>

- 5.2. The BHF and its members would like to negotiate collectively with health care providers or their representative associations on coding and tariffs before publishing a Scale of Benefits to ensure that it is as informed as possible.
 - 5.3. The BHF and its members want an exemption to be able to collaborate on health technology assessments. The BHF and its members wish to use health technology assessments in collective bargaining with the suppliers, or providers using such technologies, to ensure more affordable prices of such technologies for all scheme beneficiaries. Furthermore, the BHF and its members wish to enter into collective agreements concerning rare, high-cost health technologies that will bring the prices down while at the same time improving access for all scheme beneficiaries and determining the funding parameters for that access.
 - 5.4. The BHF seeks an exemption to enable it to make submissions freely and effectively on behalf of its members to regulatory authorities and government institutions on issues of the price of health care services, health care quality, trade practices, health technology, a standardized basic benefit package, coding and health outcomes based on detailed information supplied to it by its member schemes in this regard. This may require the disclosures by its members to BHF of competitive information which is prohibited by the Act.
6. The BHF requests that the Commission grants its exemption application and its of the view that the practices and agreements contemplated in its application:
 - 6.1. will result in change of productive capacity necessary to stop decline in the industry, in line with section 10(3)(b)(iii).
 - 6.2. will promote the economic development, growth, transformation, and stability of the medical schemes industry, in line with section 10(3)(b)(iv).
 - 6.3. will result in competitiveness and efficiency gains that would promote the expansion of the medical schemes industry, in line with section 10(3)(b)(v).
7. The BHF is requesting the Commission to grant the exemption from certain provisions of Chapter 2 of the Act for a period of 5 years from the date the exemption is granted and/or conditionally granted.

8. 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 should not, be granted.
9. All representations and submissions must be directed to:

Mr. Thulani Nhlabathi and Mr. Tlabo Mabye

Competition Commission South Africa

Market Conduct Division

Private Bag X23

Lynnwood Ridge

0040

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

10. In correspondence kindly refer to Case No: **2021Dec0045**