

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 Day Hospital Association of South Africa ("**DHA**") has applied to the Competition Commission ("**Commission**"), in terms of Section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act.
2. The DHA is a representative body of independent, registered, and private day hospitals across South Africa. It has its' principal address at 506 Jochemus Street, Erasmuskloof Ext 3, Pretoria, 0153.
3. In South Africa, day hospitals serve as modern healthcare facilities which focus on the provision of short-stay surgical and diagnostic procedures, performed in an operating theatre on a same-day basis. The day patient is admitted in the morning and discharged upon completion of the procedure. The day hospitals are registered with the various provincial health departments and with the board of healthcare funders as most of their patients are medically insured. There are some exceptions for example where facilities treat patients for procedures which are traditionally not covered by medical schemes such as cosmetic, and some fertility related procedures.
4. DHA first came into being in 1992 but the period between 2000 and 2005 saw closure of many day hospitals. However, due to the current growth in the day hospital industry with more facilities opening and more day procedures being performed in those facilities, the DHA is fully operational again. The DHA in its current form, was revived in 2014 with its key objectives being: to promote day hospitals and the benefits of day surgery in South Africa, as well as, promoting day surgery for: (a) the appropriate patient; (b) with the appropriate procedure; (c) receiving appropriate care; (d) in an appropriate facility.
5. Commencing on 1 November 2018 to 31 October 2023, the Commission granted the National Hospital Network ("**NHN**"), a co-operative venture of medical enterprises, a five-year exemption. The NHN exemption covers collective bargaining, global fee negotiations and centralised procurement. Members of the NHN consist of a group of independent

private hospitals who run medical establishments such as day hospitals, acute hospitals, sub-acute hospitals, psychiatric hospitals, ophthalmic hospitals, and physical rehabilitation hospitals. The exemption allows the members who are effectively competitors to engage in collective bargaining with medical schemes and medical scheme administrators on behalf of its members; engage in global fee negotiations with medical schemes, medical scheme administrators; and to undertake collective or centralised procurement on behalf of its members.

6. It bears mention that, 49 of the DHA's 52 members are currently part of the existing NHN exemption. Of these 49 members, 46 would like to exit the existing NHN exemption, giving rise to the current application for a separate exemption which is intended to be more suitable for day hospitals. The reason provided for this is that the members of the DHA are not realizing the full benefits that were intended to flow from the NHN exemption.
7. Currently, the DHA proposes a commercial agreement between its' members, which will entail (1) Collective Bargaining (2) Centralised Procurement and (3) Alternative Reimbursement Models. Should the exemption be granted, the conduct is likely to contravene the Competition Act as it may be regarded as directly or indirectly fixing a purchase price or selling price or any other trading condition in terms of section 4(1)(b)(i) of the Competition Act.
8. The Commission is requested to exempt the DHA with regard to the above as the DHA is of the view that the conduct will:
 - 8.1. promote the effective entry into, participation or expansion within a market by small and medium businesses, or firms controlled or owned by historically disadvantaged persons, in line with Section 10(3) of the Act.
 - 8.2. encourage competitiveness and efficiency gains which promote employment or industrial expansion, line with Section 10(3) of the Act.
9. More specifically, the DHA anticipates that the commercial agreement, through the requested exemption, will enable it to:
 - 9.1. develop a centralised procurement strategy that will have a strong focus on small and medium businesses as well as controlled and/or owned by historically disadvantaged persons. The centralised procurement strategy is intended to have a strong focus on historically disadvantaged persons, including BEE suppliers;

- 9.2. have a focused approach on the individual day hospitals' surgical / ethical baskets which are specific to day procedures and will ultimately benefit the overall cost efficiencies within the different tariff models; and
- 9.3. identify procurement negotiating opportunities across the DHA platform which will support the cost efficiencies which are specific to day procedures.
10. The DHA envisages, should the exemption be granted, that the commercial agreement will enable the day hospitals to encourage patients to opt for procedures in day hospitals as opposed to either of the three largest hospital groups and/or any of the acute hospitals, likely leading to an increase in demand, and more day hospitals seeking to enter the market and/or expanding their existing service offerings. Thus, resulting in an increase in employment opportunities in the private healthcare sector.
11. The DHA is requesting the Commission to grant the exemption for a period of 5 years from the date of commencement of the commercial agreement.
12. 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.
13. The Non-Confidential version of the exemption application is provided at the following link:
<http://www.compcom.co.za/wp-content/uploads/2021/03/Non-Confidential-Version-of-the-Exemption-Application-dated-29-January-2021.pdf>
14. All representations and submissions must be directed to:

Ms. Priya Reddy

Competition Commission / Market Conduct Division

PriyaR@compcom.co.za

In correspondence kindly refer to Case No: **2021FEB0013**