

## 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.<sup>1</sup>
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:

<sup>1</sup> 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](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.<sup>2</sup>
- 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.

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<sup>2</sup> 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>