



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 43

2017

NOTICE OF ACTION TO BE TAKEN UNDER SECTION 38: DR. PANDULENI FILEMON BANGO ITULA // NAMIBIAN ASSOCIATION OF MEDICAL AID FUNDS AND NAMIBIAN DENTAL ASSOCIATION
CASE NUMBER: 2015JAN0001COMP

Competition Act, 2003 (Act No. 2 of 2003)
(Section 41, Rule 18(1))

1. The Namibian Competition Commission (“the Commission”) on the 10th of February 2015 received a complaint from Dr. Panduleni Filemon Bango Itula against the following associations of undertakings collectively herein referred to as the Respondents:
 - 1.1 The Namibian Association of Medical Aid Funds (“NAMAF”);
 - 1.2 Namibia Medical Care Medical Aid Fund (“NMC”);
 - 1.3 Namibia Health Plan Medical Aid Fund (“NHP”);
 - 1.4 Renaissance Health Medical Aid Fund (“Renaissance”);
 - 1.5 Nammed Medical Aid Fund (“Nammed”);
 - 1.6 Bankmed Namibia (“Bankmed”);
 - 1.7 Namdeb Medical Scheme (“Namdeb”);
 - 1.8 Napotel Medical Aid Fund (“Napotel”);

- 1.9 Roads Contractor Company Medical Scheme (“RCC”);
- 1.10 Woermann Brock Medical Aid Fund (“WB”) and
- 1.11 The Namibia Dental Association (“NDA”).

The Commission investigated the complaint and on the 30th of June 2016 gave notice of its proposed decision.

2. The Commission gives notice that it intends to take the following action under section 38:

- 2.1 Following an investigation in terms of section 33 of the Competition Act and following consideration of all written representations made in terms of section 36 of the Competition Act, 2003 (Act No. 2 of 2003) (“the Competition Act”), the Commission has decided to institute proceedings in Court against the Respondents for an order:
 - 2.1.1 declaring that the Respondents have collectively contravened section 23 (1), read with sections 23 (3) (e) and section 23 (3) (f) of the Competition Act;
 - 2.1.2 interdicting NAMAFA from publishing Rule 014 (whether as a guideline, recommendation or otherwise) in a manner that infringes the Competition Act;
 - 2.1.3 interdicting the Respondents from the application of Rule 014 or any other similar Rule in a manner that infringes the Competition Act;
 - 2.1.4 stipulating a timeframe within which the Respondents must ensure compliance with the Competition Act;
 - 2.1.5 seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1)(a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
 - 2.1.6 ordering that the Respondents pay the costs of the proceedings and such further and/or alternative relief as the Court may consider appropriate.

Against:

The following undertakings, organisations or associations of undertakings are listed as the Respondents against whom relief will be sought in terms of section 38 of the Competition Act:

- 2.1.7 **Namibian Association of Medical Aid Funds (“NAMAFA”)**, a statutory body with juristic personality established in terms of Section 10 of the Medical Aid Funds Act, 1995 (Act No. 23 of 1995), situated at 13 Feld Street, Windhoek, Namibia.
- 2.1.8 **Namibia Medical Care Medical Aid Fund (“NMC”)**, a registered open medical aid fund managed by the NMC Board of Trustees and an appointed Principal Officer in accordance with the registered NMC Rules, the guidance of the Medical Aid Funds Act and other applicable legislation situated at Methealth Office Park, Maerua Park and managed / administered by Methealth Namibia Administrators.
- 2.1.9 **Namibia Health Plan Medical Aid Fund (“NHP”)**, a registered open medical aid fund situated at Hidas Centre, First floor 21 Nelson Mandela Avenue, Klein Windhoek and managed and/or administered by Medscheme Namibia.

- 2.1.10 **Renaissance Health Medical Aid Fund** (“Renaissance”), a registered open medical aid fund situated at Unit 2, Jan Jonker Heights Office Park, Jan Jonker Road and managed and/or administered by Prosperity Health Namibia.
- 2.1.11 **Nammed Medical Aid Fund** (“Nammed”), a registered open medical aid fund situated at 1 John Ludwig Street, Klein Windhoek and managed and/or administered by Paramount Health Care Ltd.
- 2.1.12 **Bankmed Namibia** (“Bankmed”), a registered closed medical aid fund situated at Methealth Office Park, Maerua Park, Windhoek and is managed / administered by Methealth Namibia Administrators.
- 2.1.13 **Namdeb Medical Aid Scheme** (“Namdeb”), a registered closed medical aid fund situated at No. 10 Dr Frans Indongo Street, Namdeb Centre, 10th Floor, Windhoek and managed and/or administered by Prosperity Health Namibia.
- 2.1.14 **Napotel Medical Aid Fund** (“Napotel”), a registered closed medical aid fund situated at c/o Luderitz & Daniel Munamava, Windhoek, Namibia and managed and/or administered by Prosperity Health Namibia.
- 2.1.15 **Roads Contractor Company Medical Scheme** (“RCC”), a registered closed medical aid fund situated at 140 Lazarett Street, Southern Industrial Area and managed and/or administered by Prosperity Health Namibia.

3. The nature of the conduct that is the subject of the action is:

- 3.1 The Respondents have made a decision to establish, publish and implement Rule 014 in 2014 as part of NAMAFA’s benchmark tariffs guidelines. The Rule is applicable to date and provides that “Item 8116 (Cone Beam Computed Tomography (CBCT) only applies to Maxillo-facial and Oral Surgeons, Prosthodontists, Periodontists and Orthodontist and Rule 009 does not apply”. Rule 009 provides that “dentists in general practice shall be entitled to charge two-thirds of the fees/benefits of specialists only for treatment that is not listed in the schedule for dentists in general practice and Modifier 8004 must be shown against any such item.”
- 3.2 The Commission’s investigations revealed that Rule 014 is discriminatory and exclusionary in nature and has negative impact on fair competition in the dentistry market as far as the use of Cone Beam Computed Tomography (“CBCT”) is concerned. The Commission also found that the implementation of Rule 014 has competitively disadvantaged dentists in general practice who already own the CBCT equipment.
- 3.3 The Commission found no scientific evidence which suggests that CBCT equipment usage is beyond the capability of dentists in general practice and is more preferable for use by specialists. Therefore, Rule 014 is harmful to competition in the dentistry market as it prevents dentists in general practice from investing in new technology, and it limits market access to dentists in general practice who may wish to acquire the CBCT equipment for the purpose of better health care delivery to their patients and increase health care access.
- 3.4 The Commission therefore finds the conduct of the Respondents to be in contravention of section 23 (1) read together with section 23 (3) (e) and 23 (3) (f) of the Act.

4. Notwithstanding the above, the Commission remains open to engaging with the Respondents with the object of settling the matter in terms of section 40 of the Competition Act and to avoid proceedings in terms of section 38 of the Competition Act.

S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION
