



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CNF032Apr18

In the Section 45(1) application:

Bonitas Medical Fund

**Applicant**

and

National Health Network NPC

**First Respondent**

The Competition Commission

**Second Respondent**

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Panel : AW Wessels (Presiding Member)  
A Ndoni (Tribunal Member)  
F Tregenna (Tribunal Member)

Heard on : 23 May 2018

Decided on : 23 May 2018

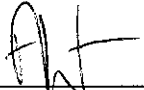
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### **ORDER: APPLICATION FOR ACCESS TO CONFIDENTIAL INFORMATION**

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The Competition Tribunal, having heard the parties, makes the following order:

1. The First Respondent is, in terms of section 45(1) of the Competition Act, 89 of 1998 ("the Act"), to grant the Applicant's legal representatives and economic advisors access to a full unredacted version of the First Respondent's Application for Exemption in terms of section 10(1) of the Act and all annexures thereto, subject thereto that the Applicant's legal representatives and economic advisors provide the necessary confidentiality undertakings in the form attached hereto.
2. The First Respondent is to pay the costs of the Applicant, on a party and party scale, including the costs of one counsel.

  
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**Presiding Member**  
**Mr AW Wessels**

**23 May 2018**  
**Date**

**Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna**

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CT CASE NO: CNF243Nov17**  
**CC CASE NUMBER: 2017/AUG/0020**

In the matter between:

**BONITAS MEDICAL FUND**

Applicant

and

**NATIONAL HOSPITAL NETWORK NPC**

First Respondent

**THE COMPETITION COMMISSION OF SOUTH AFRICA**

Second Respondent

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**CONFIDENTIALITY UNDERTAKING**

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I, the undersigned,

- .....
1. Acknowledge that I have been and will be provided with confidential information ("**Confidential Information**"), being information in relation to which a confidentiality claim in the prescribed Form CC7 has been filed with the Competition Commission ("**Commission**"), contained in the application by the National Hospital Network NPC ("**NHN**") in terms of section 10 of the Competition Act (Act no. 89 of 1998) ("**Act**"), to exempt from the application of Chapter 2 of the Act certain practices and agreements by its members ("**Exemption Application**").

2. Undertake that I shall –
  - 2.1. treat all such Confidential Information as strictly confidential;
  - 2.2. not, under any circumstances whatsoever in any manner or form or to any extent whatsoever, disclose, divulge or disseminate or cause the Confidential Information to be disclosed, divulged or disseminated to any person, unless -
    - 2.2.1. express permission has been obtained from the NHN to disclose all or part of such Confidential Information; or
    - 2.2.2. all or part of the Confidential Information are found by the Competition Tribunal, the Competition Appeal Court or the Supreme Court of Appeal not to be confidential as defined in section 1(1) of the Act; or
    - 2.2.3. all or part of the Confidential Information becomes publicly available through no breach of this confidentiality undertaking; or
    - 2.2.4. all or part of the Confidential Information is already in the lawful possession of GMI;
    - 2.2.5. I become obliged by law to disclose the Confidential Information, in which event I will, to the extent practicable, first inform the NHN of the particular Confidential Information to enable it to make the necessary representations in an endeavour to prevent such disclosure;
  - 2.3. not directly or indirectly use, exploit or in any other manner whatsoever apply any Confidential Information for any purpose whatsoever other than for the purpose for which it was disclosed (without disclosing the content of the Confidential Information), it being to advise Bonitas Medical Fund ("**Bonitas**") in the Exemption Application and related proceedings, and otherwise than in accordance with the provisions of this undertaking;
  - 2.4. to the extent that I deem it necessary to grant other employees of GMI access to the Confidential Information, procure that any such person to whom disclosure of the Confidential Information is made to first sign a confidentiality

undertaking on the same terms as this confidentiality undertaking and shall provide a copy thereof to the NHN;

- 2.5. to the extent that I deem it necessary to give an independent economic expert access to the Confidential Information, procure that any such expert is made to first sign a confidentiality undertaking on the same terms as this confidentiality undertaking and shall provide a copy thereof to the NHN. Any such independent expert shall be granted access to the Confidential Information only for purposes of advising Bonitas Medical Fund ("**Bonitas**") in the Exemption Application and related proceedings. For the avoidance of doubt, I confirm that any counsel briefed by Bonitas in the Exemption Application and related proceedings will not be required to sign such a confidentiality undertaking; and
- 2.6. within 20 business days after the expiry of the period for the lodging of an appeal following the conclusion of the Exemption Application proceedings or within 20 business days after the conclusion of any appeal or review in respect of the Exemption Application proceedings (or, in either case, such longer period as may be approved by the NHN) return to the NHN all documentation containing any of the Confidential Information in the possession of GMI, or confirm in writing that all such documentation has been destroyed;
- 2.7. I will abide by this arrangement and ensure that all employees of GMI and such independent economic experts as I may involve in the matter undertake so as well, copies of which confidentiality undertakings I will provide to the NHN.
- 2.8. I confirm that the undertakings in this confidentiality undertaking are given to and in favour of the NHN.

SIGNED AT ..... on this ..... day of ..... 2018.

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WITNESSES: 1. ....  
2. ....