competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case Nos: CRP003Apr15/EXC265May15
CRP003Apr15/ EXC266May15

In the exception application by:

Discovery Health Medical Scheme	1st Applicant
Discovery Health Limited	2nd Applicant

and

Afrocentric Healthcare Limited	Respondent

In re the Complaint referral between

Afrocentric Healthcare Limited	Applicant

and

Discovery Health Medical Scheme	1st Respondent
Discovery Health Proprietary Limited	2nd Respondent

Panel	: Yasmin Carrim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andreas Wessels (Tribunal Member)
Heard on	: 16 February 2017
Order Issued on	: 26 July 2017
Reasons Issued on	: 26 July 2017

Reasons for Decision

INTRODUCTION

[1] This matter concerns exception applications brought by Discovery Health Medical Scheme ("**DHMS**") and Discovery Health Proprietary Limited ("**DH**") against the self-referral brought by Afrocentric Healthcare Limited ("**Afrocentric**") in terms of section 51(1) of the Competition Act ('the Act").[1]

[2] Medscheme Holdings Proprietary Limited, which is held by Afrocentric, and DH are medical aid administrators which provide administrative and support services to medical schemes. Medical schemes are generally classified as either open or closed schemes. Open schemes are open to all members of the public subject to the rules of the particular scheme. Closed schemes are usually restricted to persons who meet certain criteria such as professional qualifications or employment within a particular company. DH administers only one open scheme, namely DHMS. All the other schemes administered by DH are closed schemes which at the time of the self-referral amounted to fourteen.[2] DHMS is the largest open medical scheme in South Africa.

[3] Medical schemes are not-for-profit associations governed by a Board of Trustees. The schemes usually conclude agreements with administrators who manage the day to day functions of the scheme, which would include services such as the negotiation of tariffs with service providers and management of members' claims.

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[1] Act no. 89 of 1998.
[2] Para 8.1 at page 28 of the bundle.

[4] We have decided to uphold the exception applications brought by DH and DHMS and accordingly dismiss the self-referral brought by Afrocentric. The reasons for our decision follow.

BACKGROUND

[5] Afrocentric submitted a complaint to the Competition Commission ("Commission") against DHMS and DH on 30 June 2014 in terms of section 49B (2) of the Act ("**the 49B complaint**"). In terms of the 49B complaint, Afrocentric argued that DH as a medical aid administrator, in its negotiations with hospitals for tariffs, on behalf of the medical schemes it administers did so collectively. This conduct by DH, of negotiating hospital tariffs collectively for all the medical schemes it administers, amounted to a contravention of section 4 (1) (b) (i), (ii) and (iii) of the Act and a contravention of the Commission's 2004 ruling against BHF in relation to these types of collective bargaining arrangements.[3] The Commission, after investigating the complaint issued a notice of non-referral citing two reasons, (i) that the respondents did not operate in the same line of business (i.e. were not competitors in a horizontal relationship); and (ii) that outsourcing arrangements between medical schemes and medical scheme administrators formed part of the Commission's healthcare inquiry.

[6] A critical concession made by Afrocentric in the 49B complaint was that open and closed medical schemes did not compete with each other.

[3] *Competition Commission and The Board of Healthcare Funders of South Africa* case number 07/CR/Feb05.

[7] Upon receipt of the notice of non-referral Afrocentric filed an application to the Tribunal in terms of section 51 (1) of the Act ("**the self-referral**").

[8] In the self-referral, Afrocentric persists with the allegation that the collective bargaining DH engages in, as described in the 49B complaint, is conduct that is in contravention of section 4 (1)(b) alternatively section 4(1)(a) of the Act.

[9] However in the self-referral Afrocentric alleges, which it did not do in the 49B complaint, that DH, although not a competitor in the medical schemes market, constituted an "association of firms" within the meaning of section 4 of the Act. It alleges further that the medical schemes administered by DH competed in the market for the procurement of health goods and services on behalf of their members and that they colluded by appointing DH as their administrator. Notwithstanding these new allegations in the self-referral Afrocentric did not seek relief against any of the other medical schemes administered by DH.

[10] In response to these allegations, DHMS and DH raised the following objections: Afrocentric failed to (i) establish a valid cause of action in its self-referral and (ii) had failed to join all medical schemes administered by DH. Furthermore, they submitted that on the basis of prevailing jurisprudence the self-referral was not validly brought because the case now being advanced by Afrocentric was substantially different from that lodged with the Commission. Afrocentric ought to have lodged this new case with the Commission before referring it to the Tribunal. The Tribunal accordingly did not enjoy jurisdiction over the conduct now being alleged by Afrocentric in the self-referral.

[11] Thereafter Afrocentric filed a joinder application seeking to join fifteen closed medical schemes administered by DH during the alleged period

of contravention. This application was opposed by DH and DHMS. The joinder application was heard prior to the hearing of these applications. It was however dismissed by the Tribunal on the basis that joinder would be premature in light of the fact that DH and DHMS had challenged the self-referral on the grounds described above and that it would be preferable to decide the merits of these objections first.[4]

[12] The exception applications were accordingly heard on 16 February 2016.

[13] In essence the arguments put up by Discovery Health and DHMS were that -

13.1. Afrocentric in the self-referral has failed to set out a valid cause of action for purposes of a contravention of section 4(1) (a) and (b) of the Act because on its own version (as can be gleaned from its concessions in the 49B complaint) DH and DHMS are not competitors in a horizontal relationship but in fact are in a vertical relationship, with DH providing administration services to DHMS. A critical concession that had been made by Afrocentric was that open and closed medical schemes did not compete with each other. [5]

13.2. Furthermore, the recent allegation by Afrocentric in the self-referral that DH constituted an "association of firms" [6] and that the medical schemes it administered competed in the market for the procurement of health goods and services amounted to a new case.[7] The case referred to the Tribunal was changed by Afrocentric in an attempt to bring it within the ambit of section

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[4] *Afrocentric Healthcare Limited v Discovery Health Medical Scheme and Discovery Health Proprietary Limited and 15 others* case number CRP003Apr15/JOI120Sep15.
[5] See para 25 of Afrocentric's s49B complaint at page 97 of the record and para 8.4 of Afrocentric's founding affidavit in the self-referral at page 29 of the record.
[6] Para 22 at page 144 of the bundle referring to para 8.4 at page 29 of the bundle. "...while the applicant appreciates and understands that Discovery Health does not compete directly in the market for medical schemes... [it] in form and substance, constitutes an association."
[7] Para 23 at page 23 of the bundle.

4(1). Afrocentric was not permitted to do this because in terms of *Glaxo-Wellcome*[8] and *Yara*[9] a private complainant is not entitled to expand the ambit of the complaint lodged with the Commission when it refers it to the Tribunal. The Tribunal accordingly lacked jurisdiction to hear the self-referral without it first being investigated by the Commission.

13.3. Notwithstanding that it was impermissible for Afrocentric to refer a different case to that which it had lodged with the Commission the self-referral itself did not disclose a cause of action.

[14] They argued further that the self-referral ought to be dismissed and Afrocentric ought not to be given an opportunity to amend its papers, as the Tribunal has often permitted, because allowing Afrocentric to do so would further offend the referral rule established in *Glaxo* and *Yara.*[10]

[15] In response to this, Mr Subel on behalf of Afrocentric argued firstly that exceptions are extraordinary processes and the Tribunal being *sui generis* in nature should not uphold them unless there is no possibility that any evidence will change the matter. Specifically in relation to this case, the test should be whether there is no possibility that evidence could establish a horizontal relationship. He maintained that the case complained of is the same as that referred and any apparent rectification could be achieved through the ordinary course with the benefit of further particulars, discovery and trial. He argued further that a strike out at this stage would be peremptory and would not give the applicant the opportunity to meet its case.

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[8] *Glaxo-Wellcome (Pty) Ltd v National Association Pharmaceutical Wholesalers* case number 15/CAC/Feb02.
[9] *Competition Commission v Yara* 2013 (6) SA 404 (SCA).
[10] *Ibid* footnote 8 and 9 above.

[16] He further submitted that *Senwes*[11] warns against the uncritical use of formalism in proceedings at the Tribunal to limit the Tribunal's jurisdiction.

[17] Mr Subel in argument suggested that DH and DHMS had misunderstood Afrocentric's case and that in essence what was being alleged was a type of hub-and-spoke arrangement between DH and the medical schemes it administered and which will require further evidence to prove.

[18] The only response that Afrocentric put up in relation to its concession in the 49B complaint that open and closed medical schemes do not compete was that DH and DHMS had themselves conceded in their pleadings that there is some competition between open and closed schemes "at the fringes." Establishing the extent of competition would require evidence therefore the case is not clear-cut making an exception application inappropriate. For these reasons, the Tribunal ought not to dismiss the self-referral without hearing evidence and if necessary require Afrocentric to amend its pleadings and/or provide further particulars.

OUR ANALYSIS

[19] It would seem logical to consider first the primary objection raised by DH and DHMS namely that the self-referral was not validly brought and the Tribunal lacks jurisdiction therein. If we would find in favour of the applicants in this respect there would be no need to determine whether or not the self-referral displays a cause of action.

No jurisdiction and the referral rule

[20] In both the 49B complaint and the self-referral Afrocentric sought relief only against DH and DHMS for a contravention of section 4(1)(b)(i),

[11] *Competition Commission and Senwes Limited* 2012 (7) BCLR 667 (CC)

(ii), (iii) alternatively 4(1)(a) of the Act. Thus in both the 49B complaint and the self-referral it did not in the first instance join the other medical schemes administered by DH nor did it seek any relief against them.

[21] The relevant sections of the Act are:

"4(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –

(a) it has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other procompetitive gain resulting from it outweighs that effect; or

(b) it involved any of the following restrictive horizontal practices:
(i) directly or indirectly fixing a purchase or selling price or any other trading condition;
(ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services, or
(iii) *collusive tendering…"*

[22] The non-joinder of the medical schemes administered by DH, other than DHMS, at the time of the 49B complaint made sense because on Afrocentric's own version in that complaint "… *open schemes compete (while closed medical schemes do not compete) with one another for members as growth in membership numbers (and concomitant rises in contribution income) assist schemes to raise the risk pool…*[12]

[23] And further that DH, an administrator, was not a medical scheme, and was not in the same market as DHMS[13] because it was active in the market for medical scheme administration: "*A market for medical scheme administrators exists in that various medical aid administrators compete against one another for the business of medical schemes*

[12] See para 25 of Afrocentric's section 49B complaint at page 97 of the record and para 8.4 of Afrocentric's founding affidavit in the self-referral at page 29 of the record.
[13] Para 37 at page 101 of the bundle.

desirous of appointing a medical scheme administrator to administer its affairs in accordance with sections 58 of the MSA, read with the rules of the medical scheme concerned."[14]

[24] The only conduct that Afrocentric complained of in the 49B complaint was that of DH and DHMS. It had not alleged any conduct in contravention of the Act on the part of the other medical schemes administered by DH.

[25] It was thus unsurprising that the Commission non-referred the complaint as a contravention of section 4 (1) (a) or (b) of the Act because on Afrocentric's own version, closed and open schemes were not competitors (i.e. there is no horizontal relationship between them) and neither were DH (the administrator) and DHMS (medical aid scheme) due to the fact that they "were not in the same line of business".

[26] In the self-referral Afrocentric attempts to avoid the difficulties faced by it in the 49B complaint.

[27] First it seeks, in direct contradiction to its submission in the 49B complaint, to make the case that <u>*all*</u> medical schemes compete in one market and thus we find at paragraphs 6.1 and 6.2–

27.1. "6.1 *A market for the provision of medical schemes membership and services to the public exists in that medical schemes compete with one another to attract members to their schemes and to provide to those members in accordance with the schemes' obligations in terms of the MSA and the rules of each scheme ("the medical schemes market");* and

27.2. 6.2 *All medical schemes are non-profit organisations yet schemes compete with one another for members as growth in membership numbers (and concomitant rises in contribution income) assist schemes to raise the risk pool, increase reserves*

[14] Section 49B complaint, para 41 at page 102.

and is of assistance when negotiating prices and levels of service with various service providers (e.g. hospital groups; medical equipment suppliers and the medical professions). The relative size (measured by number of members) of the competing medical schemes is widely recognized as a materially significant factor when negotiating prices and levels of service with various service providers, including the big three hospital groups, Netcare, Mediclinic and Life …"

[28] This allegation then lends support to the further allegation at paragraph 8.3 that:

28.1. *"DHMS* [..] *should reasonably be aware that it is* [a] *prohibited practice, and a contravention of section 4(1) of the Act to, either directly or indirectly, including via its agent Discovery Health, to agree, alternatively, to act in concert with its competitors to bargain collectively with other competitors, namely the remaining medical schemes administered by Discovery Health. The facts set out above support the inference that DHMS has contravened section 4(1) by acting in concert, alternatively, in agreement with competitors, namely the remaining medical schemes administered by Discovery Health, be negotiating, with each one of the hospital groups, as a collective bargaining unit…"*

[29] It then goes further and makes the following concluding remarks paragraph 18.1 –

29.1. *"Applicant submits that there is co-ordinated conduct between the schemes, being competitors, administered by Discovery Health. Following the annual collective negotiations, Discovery Health-administered schemes apply agreed tariffs uniformly. Each scheme does not, independently of the remaining schemes, consider whether to apply the tariffs. The schemes uniformly apply the negotiated tariffs across the board and there is no distance maintained between the schemes and the agent-Discovery Health- when deciding on whether to apply the negotiated tariffs."*

[30] What we see is a substantially different case being mounted in the self-referral. Whereas previously it was alleged that DH and DHMS, two parties in a vertical relationship contravened section 4(1) (a) or (b) of

the Act through some form of collective bargaining, at the heart of this case is the allegation that *all* the *medical schemes* which are administered by DH engage in collusive conduct, one of whom is DHMS, an open scheme, and the others being closed schemes.

[31] Mr Subel, on behalf of Afrocentric suggested that what is being alleged is a type of hub-and-spoke purchasing cartel where the competitors (spokes) collude through a chosen agent or association (hub) to offer the same price to suppliers and service providers of health products.

[32] In other words, what was now being alleged was that all the medical schemes administered by DH collude with each other in a hub-and-spoke type of cartel whereby DH is utilised as the hub for purposes of their collusion. The medical schemes it was alleged, compete in a two sided market, one in which all medical schemes are said to compete for members on the one side and the other in which medical schemes compete for the procurement of goods and services.

[33] This case had not been previously alleged in the 49B complaint.

[34] The procedure for initiating a complaint and its referral to the Tribunal by private parties is regulated by sections 49B (2), 49B (3) and 51(1) of the Act. Section 49B (2) makes provision for a person to lodge a complaint with the Commission. Such a person is defined as a complainant in section 1(1) (iv). Once the complaint has been lodged the Commission is required to appoint an inspector and investigate the complaint.[15] Within one year or such extended period as may be agreed between the Commission and the complainant, the Commission may either refer the complaint to the Tribunal if it determines that a prohibited practice has been established[16] or issue a notice of non-referral.[17]

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[15] Section 49(B) (3).
[16] Section 50 (2) (a) read with section 50 (4) (a).
[17] Section 50(2) (b) read with section 50(4) (a).

[35] In the event that the Commission issues a certificate of non-referral, the complainant is entitled to self-refer its complaint to the Tribunal as provided in section 51 (1).

[36] The ambit of "the complaint" that can be referred by a private complainant to the Tribunal under section 51 (1) has already been determined by the CAC. The CAC has made it plain in *Glaxo* that "*section 50 was carefully crafted and what was contemplated, in the event of non-referral by the Commission, was that the complainant may itself refer [..] "the complaint" or particulars of "the" complaint to the Tribunal. It was not intended that in the event of a non-referral by the Commission that the complainant is given carte blanche in its referral and may thereby introduce a new complaint or particulars of a complaint not mentioned in the conduct which formed the subject of the complaint in terms of section 49B"* (our emphasis).[18]

[37] A private complainant is not permitted to refer to the Tribunal conduct or particulars of a complaint which it had not first lodged with the Commission in terms of section 49B. The underlying policy of such a provision is obvious. The Act contemplates that the Commission, as the primary enforcer of the Act, should first apply its mind to the merits of a private complaint.

[38] Thus Afrocentric is not permitted, following a non-referral by the Commission, to self-refer to the Tribunal particulars or conduct that it had not previously lodged with the Commission.

[39] Mr Subel argued that because Afrocentric had already alleged a contravention of section 4(1) (b) on the part of DH and DHMS it was permitted to add particulars at the stage of self-referral as was contemplated in *Yara.* In support of this contention, he relied on paragraph 16 of that decision at which the SCA held that "*...once it is determined that what was submitted was indeed intended to be a*

[18] *Supra* note 8 at para 22.

complaint, it makes no difference at whom the complaint was aimed. If what was submitted amounts to a complaint that A and B were involved in an agreement of price fixing, or in a concerted practice of collusive tendering, it makes no difference that the complainant's quarrel was only with A and not with B."[19]

[40] *Yara,* however, is distinguished from this case because it dealt with the *Commission*'s powers to pursue a contravention against a party mentioned in a complaint and has no relevance for the ambit of a self-referral brought by a *private complainant* under section 51(1). Moreover the conduct in question in *Yara* – namely collusion on the part of Sasol – had already been the subject of the complaint lodged with the Commission and which the Commission had investigated and subsequently referred to the Tribunal.

[41] In this matter, the case that is now being advanced by Afrocentric in the self-referral - namely that *all* the medical schemes (open and closed) collude with each other in an alleged two sided market where they compete for members in the one market and for the procurement of goods and services in the other market – was not lodged with the Commission in the 49B complaint. It may be that in the 49B complaint an allegation was made that DH somehow contravened section 4(1)(a) or (b) but that was alleged on the basis of DH's alleged conduct of "collective bargaining" and not on the basis of collusion amongst all the medical schemes administered by DH. The *conduct* now being alleged on the part of the open and closed medical schemes that is alleged to be in contravention of section 4(1), was not complained of and was not the subject of the Commission's investigation. The first time that such a case is being mounted is at the self-referral stage.

[42] The new allegations now being made in the self-referral are not merely instances of particularity or differences in interpretation where some

[19] Supra note 9.

particulars have been added which were previously omitted or where there is difference in emphasis or interpretation of conduct that has been previously alleged. Here there is *conduct* that is now being alleged on the part of *all* the medical schemes administered by DH, conduct that was not previously complained to the Commission and which was not the subject of the Commission's investigation.

[43] In our view, this alone renders the self-referral excipiable in that it was not validly brought and the Tribunal lacks jurisdiction to adjudicate the alleged conduct on the part of all the medical schemes administered by DH (as it is now being alleged) because that conduct was not first complained of to the Commission.

[44] In an effort to dissuade us from such a conclusion, Afrocentric points to the fact that its alleged hub-and-spoke cartel had been envisaged in the 49B complaint by referring to the mandate agreements signed by these medical schemes in terms of which DH was appointed as agent. But a mere mention of those agreements in the 49B complaint is not equivalent to an allegation that the medical schemes colluded with each other to fix prices.

No cause of action

[45] On the basis of our earlier conclusion, we are of the view that the jurisdictional fact required for a valid self-referral – namely that conduct alleged to be in contravention of the Act first be lodged with and be investigated by the Commission – is absent and the Tribunal does not enjoy jurisdiction therein. However, putting aside the question of our jurisdiction and for purposes of completion we consider whether the self-referral displays a cause of action.

[46] DH and DHMS argued that because Afrocentric was not permitted to add particulars to its self-referral or mount an entirely different case as it has attempted to do now, the self-referral should be limited to the

case that it had first lodged with the Commission. In other words, we should splice out of the self-referral those aspects that had not been lodged in a section 49B complaint to the Commission and have regard to only those aspects of it that were the subject of the 49B complaint.

[47] Whether or not this is necessary in light of our earlier conclusion, we accept that if we were to consider the issue of whether or not the self-referral disclosed a cause of action, our enquiry would be limited only to those aspects of Afrocentric's self-referral which were first lodged with the Commission in the 49B complaint. On such an approach , the self-referral – considering only the alleged conduct in the 49B complaint would clearly not disclose a cause of action for purposes of a section 4(1) (a) or (b) contravention simply because – on Afrocentric's own version - DH and DHMS are not competitors or in a horizontal relationship as contemplated in that section of the Act.

[48] Similar considerations would apply if we were to assess whether or not the self-referral, read in its entirety, discloses a cause of action. Once we have concluded that the self-referral has not been validly brought, there would be little merit in considering whether the allegations contained therein disclose a cause of action for purposes of a section 4(1) contravention.

CONCLUSION

[49] Thus we conclude that the self-referral has not been validly brought and the Tribunal lacks jurisdiction thereon. Even if we were to assume some partial validity of the referral, limited to only those aspects of it that had first been lodged with the Commission in the 49B complaint, we find that it would not disclose a cause of action in relation to a section 4(1) (b) or 4(1) (a) contravention. The exceptions are accordingly upheld.

[50] This then leads us to consider the appropriate remedy.

REMEDY

[51] Our general approach to exceptions is to allow parties the opportunity to amend but each case is decided on its own facts.[20]

[52] However such a remedy would be impermissible in the event where the Tribunal has held that it lacks jurisdiction in a matter, as we have found in this case. Hence an amendment is not available for Afrocentric in respect of the self-referral read in its entirety because we have found that it has not been validly brought.

[53] In respect of the self-referral, limited to only those aspects of the 49B complaint, Afrocentric argued that if the Tribunal finds that the pleadings are defective it should be allowed an opportunity to amend and supplement its self-referral to rectify any defects. Citing *Invensys* it submitted that the usual remedy in exception applications, even where there was a failure to disclose a cause of action, is to grant the offending party an opportunity to amend its pleadings[21] and that the Tribunal has held that it would not readily reach for a dismissal of a matter on the merits of a case without first satisfying itself that the prospects of success for a complainant are low and without first providing a party with an opportunity to clarify its case.[22]

[54] DHMS and DH have accepted that while the general approach to exception applications would be to allow a party to amend their pleadings they argued that this cannot be allowed in this case as it would offend the referral rule. In order for Afrocentric to rectify its case for purposes of a section 4(1) contravention it would necessarily have to allege that there was some collusion on the part of all the medical

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[20] *Invensys PLC and 2 others v Protea Automation Solutions (Pty) Limited* case number 01935; *BMW South Africa (Py) Ltd v Fourie Holdings* case number 97/CR/Sep08, *Competition Commission v South African Airways (Pty) Ltd* case number 18/CR/Mar01; *Telkom SA Limited and the Competition Commission of South Africa and Another* case number 55/CR/Jul09.

[21] Transcript page 48 and 49.

[22] *Invensys PLC and Others v Protea Automation Solutions (Pty) Ltd* case number 019315 at para 17 and 20.

schemes, conduct that it had not previously lodged with the Commission as required by *Glaxo*. This would again render the pleadings excipiable.

[55] We agree with the submission by DH and DHMS that for Afrocentic to advance its alleged hub-and-spoke cartel it would necessarily have to allege that *all* the medical schemes administered by DH were competitors as contemplated in section 4 (1) and further that they engaged in some conduct that amounted to a contravention of section 4 (1) (a) or (b). These are the very allegations that Afrocentric now makes in the self-referral and which we have found to be impermissible under *Glaxo*.

[56] A further and more compelling consideration in the choice of remedy is that the allegations that Afrocentric now advances, namely collusion on the part of medical schemes, if proven to be correct would have far reaching reputational and pecuniary consequences, not only for the schemes themselves but also for their members who are dependent on the schemes to secure access to essential health care at the lowest possible cost. Such serious allegations warrant the attention of the Commission as a public body because both the process and the outcome could potentially have significant effects on healthcare for the public at large who are members of these schemes. It would be preferable that the Commission, with its vast investigative experience and powers, investigate the matter thoroughly and holistically rather than have a private party such as Afrocentric litigate the matter in a piecemeal fashion through a myriad of amendments.

[57] Given that Afrocentric alleges that the conduct is ongoing it is not precluded from instituting another properly articulated complaint to the Commission and no prejudice would accrue to it pursuant to a dismissal.

[58] For these reasons we are of the view that a dismissal of Afrocentric's self-referral would be more appropriate.

ORDER

1. The exception applications brought by Discovery Health Medical Scheme and Discovery Health Limited under case numbers EXC265May15 and EXC266May15 are upheld.
2. The complaint referral brought by Afrocentric (Pty) Ltd under case number CRP003Apr15 is dismissed.
3. Afrocentric (Pty) Ltd is to pay the costs of first and second respondents such costs to include the cost of two counsel.

Ms Yasmin Carrim

26 July 2017

DATE

Mr Enver Daniels and Mr Andreas Wessels concurring

Tribunal Researchers:	Ms Aneesa Ravat
For the first applicant (Discovery Health Medical Scheme):	Adv. R. Pearse and Adv K. Hofmeyr instructed by ENS Africa
For the second applicant (Discovery Health Limited):	Adv W. Trengove SC and Adv P Ngcongo instructed by Ens Africa for the second applicant
For the respondent (Afrocentric Healthcare Limited):	Adv. A. Subel SC and Adv A. Landman instructed by RW Attorneys