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**24 April 2017**

**The Tribunal orders the Council for Medical Schemes to submit further particulars and for it to consolidate its case against the South African Medical Council**

The Competition Tribunal has given the Council for Medical Schemes (CMS) 20 business days to consolidate their pleadings in connection with two complaints it brought in 2013 against the South African Medical Association (SAMA) and two other member organisation for price fixing.

Tribunal also dismissed an application by SAMA to have the two complaints dismissed. The Tribunal said that CMS is required to provide the particularity sought by SAMA in relation to its complaints against SAMA.

In the complaints brought by CMS it alleged that the 2009 medical tariffs determined by SAMA allowed pediatricians to bill an extra 50% above the medical aid rate payable for new born babies requiring intensive care.

The CMS also complained about the 2010 billing guidelines of the Society for Cardiothoracic Surgeons of South Africa (SOCTSA).

In each case the CMS alleged that the application of these tariffs amounted to prohibited conduct under the Competition Act.

In a 2016 hearing, SAMA asked the Tribunal for an order dismissing CMS’s complaints. The Tribunal had ordered CMS to respond to SAMA’s exception applications through the filing of supplementary affidavits that, among others, indicates the nature of the alleged horizontal relationship between SAMA and the South African Paediatricians Association (SAPA) and between SAMA and SOCTSA.

In the recent Tribunal Order, the Tribunal has ordered, among other things, that CMS must elaborate on the recommendation and the binding nature of SAMA’s publication, and why it’s important for SAMA to publish these guidelines and how SAMA is able to achieve compliance with these guidelines by the paediatricians/neonatologists. CMS needs to outline what mechanisms, if any, are utilised by SAMA to punish non-compliance.

And that the CMS must amend its complaint limiting it only to the complaint by Dr Botha, a cardiothoracic surgeon who performed a coronary artery bypass surgery on a patient who was a member of PROFMED Medical Scheme.

The CMS has been ordered to file a new set of pleadings and consolidate its papers into one set of pleadings. In its reasons the Tribunal said: “the (2013) referrals have obviously evolved overtime and such evolution has given rise to confusions and contradictions between all the various affidavits CMS has filed”.

Background:

In its complaints filed in 2013 the CMS alleged that the 2009 medical tariffs determined by SAMA allowed pediatricians to bill an extra 50% above the medical aid rate payable for new born babies requiring intensive care. The CMS also complained about the 2010 billing guidelines of SOCTSA. In each case the CMS alleged that the application of these tariffs amounted to prohibited conduct under the Competition Act.

In response to that SAMA took the matter on review to the High Court and asked that the Tribunal put the matter on hold pending the outcome of the review application and the outcome of the Commission’s health inquiry which is considering, amongst other things, the issue of tariff guidelines.

Having considered the arguments raised by both the CMS and SAMA the Tribunal agreed to put the CMS complaints on hold pending the review application in the High Court but did not make a determination concerning the health inquiry currently underway. This decision was overturned by the Competition Appeal Court, which said that Section 7 of the Medical Schemes Act was very wide and that allegations of price fixing cannot be said not to affect the interest of CMS’s beneficiaries.

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