

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 2942 OF 2025****COMPETITION COMMISSION SOUTH AFRICA****NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)****REFUSAL TO GRANT AN EXEMPTION TO THE SOUTH AFRICAN ORTHOPAEDIC ASSOCIATION: 2022DEC0024**

1. On 15 December 2022, the South African Orthopaedic Association (“**SAOA**”) filed an exemption application with the Competition Commission (“**the Commission**”) in terms of section 10(1) of the Competition Act, No 89 of 1998, as amended (“**the Competition Act**”), for exemption from certain provisions of Chapter 2 of the Competition Act in order to engage in conduct that would be in contravention of the Competition Act. The aforementioned exemption was intended to be for a period of three (3) years.
2. The SAOA is a not-for-profit professional association that represents orthopaedic surgeons in South Africa and those who have had orthopaedic training in South Africa or show a continuing interest in the affairs of the association. The SAOA’s objective is the advancement for public benefit of the science, art and practice of orthopaedic surgery with the aim of bringing relief to patients of all ages suffering from the effects of injury or disorders of the musculoskeletal system.
3. The exemption application was in respect of the SAOA being granted permission to engage with major medical scheme funders and others interested to discuss acceptable coding bundles, total units per procedure and an acceptable total quantum.
4. According to the SAOA, the reimbursement environment requires that surgeons list codes indicating the procedure(s) performed and the absolute quantum charge. Each code has a number of units associated with it and units differ between procedure codes. Each surgeon would then ascribe a Rand unit Value (“**RUV**”) in order to create the final account (total procedure units x RUV = Total Invoiced).
5. Each medical scheme/funder/plan has different Rand unit values and codes that they accept as a bundle. As a result, the SAOA submitted that this has led to confusion in the marketplace given that surgeons charge different code bundles with different total units and different Rand unit values for the same surgical procedures. Similarly, medical

schemes accept or reject different coding bundles and pay at different Rand unit values. This according to the SAOA places patients in jeopardy as final accounts and shortfalls are difficult to predict.

6. Given the above, the SAOA requested the Commission to grant an exemption to allow it on behalf of its members, to engage with major medical scheme funders and others interested to discuss acceptable coding bundles, total units per procedure and an acceptable total quantum.
7. The SAOA relied upon the objectives set out in Section 10 of the Competition Act, which allows for an exemption of agreements and/or practices that contribute towards:
 - 7.1. Changing the productive capacity necessary to stop decline in an industry in terms of Section 10(3)(b)(iii) of the Competition Act;
 - 7.2. Maintaining economic stability in an industry designated by the Minister in terms of Section 10(3)(b)(iv) of the Competition Act; and
 - 7.3. Achieving competitive and efficiency gains that promote employment or industrial expansion in terms of Section 10(3)(b)(v) of the Competition Act.
8. On 3 March 2023, the Commission published a *Government Gazette* Notice pertaining to the SAOA's exemption application in accordance with Section 10(6) of the Competition Act, read with Rule 19(4) of the Rules of Conduct of Proceedings in the Competition Commission ("**the Rules**"). The Notice stated that the conduct sought may amount to prohibited practices in contravention of Section 4 of the Competition Act. The Notice also called upon interested parties to make written representations to the Commission within twenty (20) business days of publication as to why the exemption should or should not be granted.
9. The submissions received from interested parties were considered in the assessment of the SAOA's exemption application.
10. Notice is therefore given in terms of section 10(7) of the Competition Act that the exemption application filed by the SAOA has been rejected by the Commission. The Commission's investigation revealed that the conduct of the SAOA's members would result in a contravention of Section 4 of the Competition Act. However, the Commission also found

that the SAOA's exemption application did not meet the requirements of Section 10 of the Competition Act because of the following reasons:

- 10.1. No information was submitted by the SAOA to prove that the orthopaedic surgery industry is in decline as required by Section 10(3)(b)(iii) of the Competition Act;
 - 10.2. The orthopaedic surgery industry is not an industry designated by the Minister of Trade Industry and Competition as required by Section 10(3)(b)(iv) of the Competition Act; and
 - 10.3. There was a lack of sufficient evidence to prove that the SAOA's exemption would result in efficiency and competitive gains that would lead to the promotion of employment opportunities and industrial expansion as required by Section 10(3)(b)(v) of the Competition Act.
11. The SAOA and any other person with a substantial material interest affected by this decision may lodge an appeal to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act.
12. Further queries concerning this Notice should be directed to:

Thabang Ndlovu

Competition Commission South Africa
Market Conduct Division
Email: ThabangN@compcom.co.za

Tlabo Mabye

Competition Commission South Africa
Market Conduct
Email: TlaboM@compcom.co.za

13. Kindly make use of the following case number when sending correspondence in relation to this notice: **2022DEC0024**.