

Discovery asks for dismissal of Afrocentric claim

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Discovery Health Medical Scheme and administrator Discovery Health Ltd have asked the Competition Commission to have the Competition Tribunal throw out a complaint of collective bargaining against them.



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Afrocentric Health Limited first lodged a complaint with the commission in June 2014 that Discovery Health and Discovery Health Medical Scheme were engaging in anticompetitive behaviour and contravening the Competitions Act.

In April 2016 the tribunal turned down Afrocentric's application to add 15 more medical schemes to the complaint against Discovery Health and its largest client, Discovery Health Medical Scheme, for engaging in "prohibited horizontal practice and/or alternatively collective bargaining".

Discovery Health's advocate, Wim Trengove SC, and Discovery Health Medical Scheme's advocate, Robin Pearse, argued that Afrocentric's complaint was fatally defective. The respondents argued that Discovery Health was not an association because it administered only one open scheme and 15 restricted schemes, and therefore Afrocentric had inappropriately applied section 4 of the Competition Act.

Since there could not be a horizontal relationship, the referral should be dismissed on this basis alone, the respondents said.

Afrocentric's advocate, Arnie Subel SC, contended that there were a number of issues deserving the attention of the tribunal, and asked that the exceptions be dismissed.

He pointed to the commission's 2004 ruling prohibiting collective bargaining. The ruling required schemes to negotiate individually and independently with each hospital group separately, and medical scheme administrators to negotiate for each scheme individually.

Subel said contrary to that ruling, since 2005, Discovery Health Medical Scheme and Discovery Health had had an agreement that required each hospital group to negotiate a single hospital tariff rate for all schemes under Discovery Health administration.

He said this contravened the commission's 2004 ruling above and beyond the fact that Discovery Health admitted to this conduct in another health inquiry.

"Discovery Health is the only medical administrator bargaining on behalf of a collective," Subel asserted.

He said Discovery Health was engaging in anticompetitive behaviour in contravention of rule 4.1.A of the Competition Act by engaging in collective bargaining when negotiating tariffs with private hospitals.

Subel said Discovery Health used the market power of Discovery Health Medical Scheme, which holds 35%-45% of the market, as a bargaining tool to secure the lowest possible rates for all its medical schemes under its administration.

"Discovery Health is the kingpin in the collective bargaining process," acting as a representative for the scheme, he said. Smaller schemes under Discovery Health benefit by securing 20% lower rates than average.

The tribunal asked for time to review the matters brought before the court and would make its decision soon after analysis.

Source: BDpro

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