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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 349

19 MARCH 2020

COVID-19 BLOCK EXEMPTION FOR THE HEALTHCARE SECTOR, 2020

I, Ebrahim Patel, Minister of Trade and Industry, after consultation with the Competition Commission, hereby in terms of section 10(10) read with section 78(1) of the Competition Act, 1998 (Act No. 89 of 1998) as amended, made the regulations as set out in the Schedule hereto.

The purpose of the exemption is to strengthen the Government's health programs designed to fight COVID-19, after having declared a National State of Disaster published in Government Notice No. 313 of Government Gazette No. 43096 on 15 March 2020.

The regulations will come into effect on the date of publication hereof in the Gazette.

**MR EBRAHIM PATEL****MINISTER OF TRADE AND INDUSTRY**

SCHEDULE

Definition

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates –
 - 1.1. “**Act**” means the Competition Act No. 89 of 1998, as amended;
 - 1.2. “**COVID-19**” means the 2019 novel coronavirus (SARS-COV 2 / COVID-19);
 - 1.3. “**Healthcare facilities**” means facilities established for the diagnosis, treatment or care of individuals suffering from illness and injury;
 - 1.4. “**Healthcare funders**” refers collectively to medical schemes, medical scheme administrators, managed care organisations and healthcare insurers;
 - 1.5. “**Minister**” has the same meaning as defined in the Act;
 - 1.6. “**national disaster**” means the national disaster relating to the COVID-19 outbreak declared in Government Notice No. 313 of Government Gazette No. 43096 on 15 March 2020; and
 - 1.7. “**National Disaster Management Act**” refers to the National Disaster Management Act No. 57 of 2002, as amended.

Purpose

2. The purpose of these Regulations is to exempt a category of agreements or practices in the healthcare sector from the application of sections 4 and 5 of the Act in response to the declaration of COVID-19 pandemic as a national disaster in terms of the Disaster Management Act, solely with the purpose of:

- 2.1. promoting concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster; and
- 2.2. promoting access to healthcare, preventing exploitation of patients, enabling the sharing of healthcare facilities, management of capacity and reduction of prices.

Category of agreements or practices exempted

3. The Minister hereby exempts the following categories of agreements or practices in the healthcare sector from the application of sections 4 and 5 of the Act if undertaken at the request of, and in coordination with, the Department of Health for the sole purpose of responding to the COVID-19 pandemic national disaster and which exclude communication and agreements in respect of prices unless specifically authorised by the Minister of Health:

Hospitals and healthcare facilities

- 3.1. Agreements or practices between hospitals or healthcare facilities with the sole purpose of:
 - 3.1.1. co-ordinating on ensuring the patients are allocated (to the extent required) between the hospitals in the most efficient means possible to ensure that the respective capacities of the hospitals are effectively utilised.
 - 3.1.2. communicating with each other in relation to capacities and utilisation of facilities including intensive care units and isolation beds.
 - 3.1.3. co-ordinating in relation to the procurement of various consumables, pharmaceuticals and other inputs required for the optimal treatment of patients in order to ensure that inputs are procured in the most efficient manner possible.

3.1.4. co-ordinating on the allocation of specific types of services, medical professionals and nurses as between the various hospitals.

3.1.5. transferring nurses and medical practitioners from one hospital to another as the case may be.

3.1.6. standardising quality of care protocols.

3.1.7. transferring of medical supplies and equipment.

Medical Suppliers

3.2. Agreements or practices between medical suppliers with the sole purpose of:

3.2.1. communicating with each other in relation to availability of medical supplies.

3.2.2. co-ordinating the procurement and distribution of medical supplies.

Medical specialists and radiologists

3.3. Agreements or practices between medical specialist or radiologists with the sole purpose of:

3.3.1. communicating with each other and share data in relation to the scale of the outbreak, the disease profile and patient profile.

3.3.2. communicating with each other in relation to capacity and utilisation thereof.

3.3.3. standardising quality of care protocols.

3.3.4. transferring of medical supplies and equipment.

Pathologists and laboratories

3.4. Agreements or practices between pathologists or laboratories with the sole purpose of:

3.4.1. communicating with each other in relation to capacities and utilisation thereof.

3.4.2. co-ordinating the procurement of inputs required for testing.

3.4.3. transferring of medical supplies and equipment.

Pharmacies

3.5. Agreements or practices between pharmacies with the sole purpose of:

3.5.1. communicating with each other in respect of availability of pharmaceuticals and medical consumables.

3.5.2. co-ordinating the procurement of pharmaceuticals and medical consumables.

3.5.3. transferring of pharmaceuticals and medical consumables.

Healthcare funders

3.6. Agreements or practices between healthcare funders with the sole purpose of reducing the cost of diagnosis, tests and diagnostics, treatment and other preventative measures.

3.7. Agreements or practices between healthcare funders and healthcare facilities as well as other healthcare providers with the sole purpose of reducing the cost of diagnosis, tests and diagnostics, treatment and other preventative measures.

Agreements to support the public healthcare sector

4. Agreements or practices between the private healthcare sector and the Department of Health with the sole purpose of:

4.1. making available additional capacity at healthcare facilities to the public healthcare sector.

4.2. ensuring adequate medical supplies to the public healthcare sector.

Cost reduction measures

5. At the request of the Department of Health and subject to oversight and guidance by the Department of Health, agreements or practices concluded between the private healthcare sector and the Department of Health with the sole purpose of reducing the cost of diagnosis, tests, treatment and other preventative measures including vaccines. For the avoidance of doubt, any discussion and/or agreement on pricing between private healthcare companies or providers must be specifically authorised by the Minister of Health.

Scope of the exemption

6. The scope of these Regulations is limited only to agreements or practices specified under paragraphs 3, 4 and 5, and which have the sole purpose of responding to the COVID-19 pandemic national disaster as set out in paragraph 2.

Amendments to Regulations

7. Given the unpredictability of managing the COVID-19 pandemic, the areas of collaboration exempted in these Regulations may be expanded or reduced by the Minister by notice published in the Government Gazette in terms of these Regulations.

8. To the extent that the healthcare sector identifies additional agreements or practices outside the scope of paragraphs 3, 4 and 5 that are necessary to achieve the purpose of these Regulations, the health care sector may request the Minister to expand the scope of this exemption.

Record Keeping

9. Hospitals and Healthcare facilities, medical suppliers, medical specialists and radiologists, pathologists and laboratories, pharmacies and healthcare funders who participate in any agreements or practices falling within the scope of these exemption must keep minutes of meetings held and written records of such agreements or practices.

Representation on Regulations

10. Representations on these regulations.
 - 10.1. Any person may make written representations regarding these regulations and directions.
 - 10.2. Representations must reach the Department of Trade and Industry not later than 14 days from the date of publication of this notice.
 - 10.3. Representations should be submitted by email to ministry@economic.gov.za.
 - 10.4. Following consideration of the representations, the Minister may amend these regulations and directions.

Short Title

11. These Regulations shall be called the COVID-19 Block Exemption for the Healthcare Sector, 2020.

Commencement and duration

12. These Regulations shall come into effect on the date of publication in the Government Gazette.

13. These Regulations shall remain in operation for as long as the declaration of the COVID-19 in terms of the National Disaster Management Act as a national disaster subsists, or until they are withdrawn by the Minister whichever comes earlier.

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