



Press Statement

16th November 2022

HIGH COURT RULING PAVES THE WAY FOR CCA TO INVESTIGATE BOMAID FOR ANTI-COMPETITIVE CONDUCT

The High Court has ruled that the Botswana Medical Aid Society (BOMAID) is an enterprise subject to regulation by the Competition Act, clearing the way for the Competition and Consumer Authority (CCA) to resume its investigations against BOMAID for alleged anti-competitive practices.

The High Court by judgment dated 4th November 2022, found that BOMAID is an enterprise within the meaning of the Competition Act 2018, and is therefore subject to regulation by the Act. The High Court declared that BOMAID is a body that carries out business for purposes of gain or reward, and that its goal is one of a commercial and socially-economic nature. The reasons for this declaration were that BOMAID regulates its own tariffs, the scheme is not compulsory, it provides several types of schemes in accordance with subscriptions effected by members, and a member's ability to access health care benefits is determined by the scheme they subscribe to. Finally, that a member's failure to subscribe may result in their exclusion from such benefit.

The CCA had initiated investigations against BOMAID in 2020, for abuse of dominance contrary to section 31 (1) (e) and (g) of the Competition Act for refusal to deal with another enterprise and price discrimination or other trading conditions respectively. After the Authority served BOMAID with a notice of intention to investigate, BOMAID approached the High Court alleging that it is exempt from the provisions of the Competition Act because its activities are designed to achieve a non-commercial socio-economic objective; that it is not an enterprise as defined under section 2 of the Act, and does not carry out business for gain or reward.

BOMAID instituted legal proceedings before the High Court on 21st January 2021, seeking a declaratory order as to whether it is exempt from the application of the Competition Act or not. The CCA, opposed this application but agreed to halt any action aimed toward investigating BOMAID pending the outcome of the High Court case.

Issues for determination by the High Court were whether BOMAID is exempt from the reach of the Competition Act, and if the High Court found that there is no exemption then it must find that BOMAID is not an enterprise as defined under section 2 of the Competition Act, and with the result that section 31 under which the CCA intended to investigate is not applicable.

BOMAID was ordered to pay costs of the matter. The CCA will for all intents and purposes be resuming its investigations on BOMAID's alleged anti-competitive practices. The judgment further means the Authority can in future investigate any medical aid society that is accused of infringing the Competition Act.