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MEDIA RELEASE

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Two agreements between certain medical insurance and medical scheme providers found to be collusive and thus prohibited and void. A total fine of Rs 11,3 m imposed on the companies found to be in breach of the Competition Act 2007.

Summary

Following an investigation by the Executive Director, the Commissioners of the Competition Commission have determined that 2 agreements between members of the Association of Private Health Plans and Administrators ("APHPA") pertaining to medical insurances and medical schemes are in breach of the Competition Act 2007 (the "Act").

Consequently, these agreements among the members of the APHPA are prohibited and void.

The Commission also imposed financial penalties on certain parties to the agreements totaling about Rs. 11.3 million.

The agreements found in breach of the Act are:

1) agreement among members of the APHPA on a common scale of cost in so far that it concerns inpatient gynecological treatments; and
2) agreement among certain members of the APHPA on a common policy pertaining to reimbursement of overseas treatment.

The parties to the investigation collaborated on the matter and, without admitting liability, have accepted the findings of the Executive Director and of the Commissioners.

Background

This investigation pertained to 3 potential collusive agreements, among members of the APHPA, in relation to the provision of medical insurances/schemes and related services.

Medical insurance is offered by insurance companies and is an insurance that covers medical expenses as per the terms of the policy. A similar service is provided by some provident associations, and which is known as medical schemes.

There exist some service providers which assist provident associations, and to a lesser extent, insurance companies, to administer the medical scheme, which are known as third-party administrators.

The APHPA is a registered trade association and comprise as members, the three categories of service providers operating in the market of medical insurance and scheme: (1) medical insurance companies, (2) medical provident associations, and (3) third-party administrators of medical schemes. The members of the APHPA and parties to the investigation are Swan General Ltd, Mauritius Union

Assurance Co Ltd, SICOM General Insurance Ltd, Jubilee Insurance (Mauritius) Ltd, Eagle Insurance Ltd, Linkham Services Ltd, Medscheme (Mtius) Ltd, Business Mauritius Provident Association, Air Mauritius Provident Association, Ireland Blyth Limited Provident Association, Mauritius Commercial Bank Staff Provident Association and Rogers Group Provident Association.

In the course of their business, insurance companies and provident associations cover expenses of their insured members and as such, are exposed to risks. To manage those risks, they usually set limits on reimbursement of claims. One of the means to do this is the scale of cost which sets the maximum amount that will be reimbursed for each type of inpatient treatment. It sets the various types of surgical treatments, also known as "operations", and the maximum amount that will be reimbursed for each. The scale of cost is different from the cap that may also be imposed on limit per event or category of event (for example in-patient and out-patient). For instance, the policy may also state the maximum amount that the insurer will reimburse for all surgical interventions during a year.

The Investigation

The investigation related to 3 agreements:

1) agreements among members of the APHPA on a common scale of cost,
2) agreement among certain members of the APHPA on overseas treatment, and
3) agreement among members of the APHPA on clinic fees (including room rates and operation theatre fees for clinics).

Section 41 of the Act prohibits, among others, collusive agreements amongst competitors, including agreements to fix selling or purchase prices, market sharing agreements and agreements to restrict supply or acquisition of goods or services.

The investigation assessed whether the 3 agreements were in breach of section 41 of the Act. It is to be highlighted that breaches of section 41 of the Act are amenable to financial penalties.

It is to be noted that all parties to the investigation applied for leniency and collaborated with the Competition Commission. This in turn facilitated the investigation and the applicants benefited from a reduction in fines.

On 19 January 2021, the Executive Director completed his investigation and submitted his report to the Commissioners for their determination on the matter.

Main findings and recommendations

Agreement on common scale of cost

It was found that the APHPA has a common scale of cost and this amounts to an agreement among its members on a **common** scale of cost. The common scale of cost was in place before the coming into force of the Act.

The agreement on the common scale of cost affected two markets, namely (1) the purchase of health services for inpatient treatments (for instance, the acquisition and payment of health services like service of doctors), and (2) the supply of insurance coverage (in terms of the amount that will be reimbursed to patients).

The agreement related to both acquisition and supply of services. Horizontal agreements pertaining to acquisition have their own specificities and this made the assessment peculiar.

It was found that such an agreement may have both beneficial and harmful effects on markets. On the one hand, it may help to contain the fees of certain health service providers, enable an easy comparison of insurance benefits and facilitate a level playing field. On the other hand, it may restrict competition between insurers and may result in higher out-of-pocket payout by insured patients, the more so if health service providers do not adhere to the tariff in the common scale of cost.

Based on the evidence gathered, it was not conclusive whether the net effect of the agreement on competition was negative, to the exception of gynaecological treatments in which there was evidence that the net effect is negative.

The Executive Director was of the view that if the common scale of cost is removed in its entirety, the market may face a shock which may negatively affect its operation in the short to medium term and this may have more harmful than beneficial effects for competition and consumers.

Consequently, and in view of evidence available, the Executive Director found that only the common scale of cost on gynaecological treatment may breach the Act.

Nonetheless, the rest of the mechanism is not the ideal situation, and the Executive Director may consider an advice to Government in that respect in the future. Indeed, the parties proposed certain possible alternate mechanisms.

Agreement on overseas treatment

Patients may at times opt to conduct their surgery outside Mauritius, known as overseas treatment. It has been gathered that certain members of the APHPA, through a common communication, cautioned doctors that they will not entertain claims for certain overseas treatments, except in specified circumstances. This indicated that the parties concerned agreed on a policy to restrict reimbursement for overseas treatment to specific circumstances.

While it is not contested in the investigation that insurers may, through their insurance policies, impose restrictions on reimbursement of overseas treatment, they have to decide on such restriction individually and cannot agree to align themselves on such policies. They have to compete among themselves to offer clients the best options in terms of coverage for overseas treatment and not agree on how to limit such coverage.

As such, it was found that the agreement on overseas treatment was in breach of the Act to the extent of the commonality that was agreed and exists between them.

Agreement on Clinic fees

The Executive Director was concerned that members of the APHPA may have also agreed on the amount of clinic fees, including room rates and operating theatre fees charged by private clinics and hospitals for inpatient treatment.

It was gathered that certain clinics were sending their proposed tariff to the APHPA for acceptance in case of reimbursement for insured by its members.

However, each clinic was sending its rate separately. There was no capping of room rates and operation theatre fees at a level not agreed with the individual clinics. Consequently, it was concluded that the said agreement was unlikely to breach section 41 of the Act.

The recommendations

In view of the above, the Executive Director concluded that the agreement on the common scale of cost, in so far it concerned the gynecological treatments, and the agreement on the overseas treatment were in breach of the Act. Consequently, he recommended the Commissioners to direct the members of the APHPA to terminate these agreements and to impose financial penalties on certain members of the APHPA, excluding provident associations in view of their operating structure.

Decision of Commissioners

Subsequently, the Commissioners made their determination on the matter. They agreed with the findings and recommendations of the Executive Director. Therefore, the Commission directed the parties to put an end to the common scale of cost in so far it concerned the one specialty and the agreement on overseas treatment.

Given the collaboration of the parties and the leniency application, a reduced fine was imposed on the medical insurance companies and third-party administrators, members of the APHPA totaling about Rs 11,3 million. The fines were calculated taking into account, among others, the turnover of the enterprises in the concerned markets. The fines are as below:

Party	Financial Penalty
Swan General Ltd	Rs. 6,773,680
Mauritius Union Assurance Co. Ltd	Rs. 2,553,092
Eagle Insurance Ltd	Rs. 803,404
SICOM General Insurance	Rs. 435,175
Jubilee Insurance (Mauritius) Ltd	Rs. 333,966
Medscheme (Mtius) Ltd	Rs. 318,395
Linkham Services Ltd	Rs. 45,485

The Decision of the Commission can be accessed on website of the Commission.

Executive Director's Statement

The Executive Director, Mr. Deshmuk Kowlessur, highlighted:

"Private health expenditure represents more than 50% of total health expenditure. Medical insurance/scheme in turn is important in ensuring that patients get access to private medical facilities when required. So is competition among the providers. It must be ensured that private medical insurance/scheme providers supply the best services for the benefit of insured patients. Collusive agreements among insurers may reduce such competition and thus be detrimental to insured patients.

The Common Scale of Cost was the salient assessment of the investigation. I must say that it was a complex assessment. We appreciate the collaborative stance taken by the APHPA and its members on this matter, which has helped in expediting matters and for a prompt redress of the matter. Indeed, the fines have been significantly reduced to reflect this collaboration.

We found that although the common scale of cost is problematic, as it may affect competition, removing it can lead to a worse outcome. As such, we did not recommend rendering the whole practice void, but only part of it where we were comfortable that it is harmful. Over the long term, we will

consider whether we need to make policy recommendations in this area so as to ensure that competition is more effective.

For overseas treatment also, we observed there was an understanding between certain members on which treatment may be entertained overseas and which could not; and as such, this practice is now prohibited.

I would recommend consumers to properly verify, compare and make sure they understand the limits of their policy so that they can make informed decisions. This will also help in boosting competition."

End of media release