

Competition Laws Effect on Mediclinic's Hospital Merger

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INTRODUCTION

In *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* 2022 (4) SA 323 (CC), the Constitutional Court considered whether Mediclinic's acquisition of a private hospital group would lessen competition between private hospitals in the Potchefstroom and Klerksdorp area and negatively affect consumers through higher healthcare costs and fewer affordable options.¹ Section 12A of the Competition Act 89 of 1998 requires competition authorities to determine whether a merger is likely to substantially lessen competition before approving it.²

BACKGROUND AND ISSUE

Mediclinic sought to acquire Matlosana Medical Health Services, which owned Wilmed Park Private Hospital and Sunningdale Hospital in Klerksdorp.³ Because Mediclinic already operated a nearby hospital, the Competition Commission investigated whether the merger would reduce competition in the local private healthcare market.⁴

LEGAL PRINCIPLES

The Competition Tribunal considered factors such as market concentration, barriers to entry, possible tariff increases and effect on the public, when assessing the merger under section 12A.⁵

The Tribunal found that the private hospitals in the area competed for patients and that the merger would remove competition. As Mediclinic hospitals generally charged higher tariffs, the merger was likely to increase prices and reduce consumer choice.⁶ It also found that uninsured and financially vulnerable patients would be prejudiced as they would lose access to more affordable private hospitals.⁷

CONCLUSION

Although the Competition Appeal Court approved the merger, the Constitutional Court restored the Tribunal's decision and prohibited the merger, on the basis that it would substantially lessen competition and negatively affect consumers.⁸

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¹ *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* 2022 (4) SA 323 (CC) at para 36 and 37.

² Supra note 1 at para 40.

³ Supra note 1 at paras 13 and 18.

⁴ Supra note 1 at para 17 and 33(e).

⁵ Supra note 1 at paras 40–42.

⁶ Supra note 1 at paras 19, 20 and 30.

⁷ Supra note 1 at paras 21, 30 and 54.

⁸ Supra note 1 at paras 43–55 and 85.



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