

R10m fine for failure to notify Competition Commission of healthcare merger

The Competition Commission, Life Healthcare Group (LHG) and Joint Medical Holdings (JMH) have entered into a consent agreement, by which LHG and JMH have agreed to pay an administrative penalty of R10 million - the highest fine ever imposed to date for a failure to notify a merger.



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Despite LHG not having a majority shareholding in JMH, the Commission found that no major business decision regarding JMH's business would be taken without LHG's approval, including its budget, the appointment of key employees and items of major capital expenditure. Importantly, the Commission found that this quality of LHG's control over JMH constituted a merger in terms of the Competition Act.

Since the threshold for a large merger was met, the Commission found that LHG and JMH failed to give notice of the merger, as required by Chapter 3 of the Act and proceeded to implement the merger without Competition Tribunal approval, in contravention of the Act.

This failure to notify a merger and prior implementation was admitted by both LHG and JMH, which subsequently entered into a consent agreement with the Commission. Moreover, LHG disinvested from JMH.

In addition, the Commission found that LHG and JMH agreed that all their prices would be set jointly, with all price negotiations being conducted by LHG on its own behalf and on behalf of JMH, in contravention of the Act.

However, in return for their admission pertaining to prior implementation of the merger absent approval, the Commission agreed (in an addendum to the consent order) not to pursue a price-fixing case against the parties.

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