

Press Statement

23rd APRIL 2024

**COURT OF APPEAL JUDGEMENT PAVES THE WAY FOR CCA TO
INVESTIGATE BOMAID FOR ANTI-COMPETITIVE CONDUCT**

The Court of Appeal 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.

Following the appeal of the 4th November 2022 High Court decision by BOMAID, the Court of Appeal, on 19th April 2024 dismissed the appeal with costs and upheld the High Court's decision that indeed BOMAID is an enterprise in terms of the Competition Act 2018, because it carries on business for gain.

The Court found that BOMAID may not have profit making as its primary objective but it intended to grow as a market player in the provision of medical aid funding; by investing in for profit businesses some of which provide medical services it engaged in business for gain.

The Court took note of the fact that the medical aid market in Botswana is not regulated, resulting in no limitation to the functions and conduct of medical aid funds as compared to other countries. Left unchecked, therefore, BOMAID's direct or indirect investment in the health services market may lead to service providers being side-lined, thereby affecting medical aid members' right to choice of service provider, quality and fair price in the provision of medical services.

The court further found that, provision of medical aid in Botswana was not based on socio-economic objectives or social solidarity in that it is voluntary and the benefits are commensurate to the contributions. "A member's benefits are not philanthropic or benevolent nor defined by statute to provide an across the spectrum standard medical aid cover."

The CCA had in 2020, initiated investigations against BOMAID 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.

Following the service of a notice of intention to investigate on BOMAID, 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.

A handwritten signature in black ink, appearing to read 'J. Baleki Molosankwe', with a long horizontal line extending to the right.

James Baleki Molosankwe

Director, Communications and Stakeholder Relations