

**OUTCOME OF COMPETITION TRIBUNAL HEARING**

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*quote Nandi Mokoena)*

**Competition Tribunal finds optometry rule doesn’t substantially prevent or lessen competition**

Yeserday the Competition Tribunal issued its non-confidential judgment in a case that challenged some ethical rules in optometry finding that there was no compelling evidence that the ethical rules complained of had the effect of substantially preventing or lessening competition in the optometry market.

The case, which was brought by the CEO of the Torga Optical Group (Mr Ian Walter Buchanan) in his personal capacity, was against the Health Professions Council of South Africa and the Professional Board for Optometry and Dispensing Opticians. In it Buchanan alleged that rule 8 of the ethical rules read together with the Policy Document on Undesirable Business Practices was in contravention of the Competition Act since it restricted lay or corporate ownership and investment in optometry businesses and in that way significantly prevented or lessened competition in the optometry market. Buchanan also alleged that rule 8 and the policy prohibited optometrists from working for a firm in which the directors, shareholders or partners were not registered optometry practitioners.

According to Buchanan the restrictions contained in rule 8 and the policy had a negative effect on competition and ultimately consumers of optometry products and services because they prevented optical businesses from vertically integrating with retail optometric chains – which could lead to cost savings; it limited the entry and expansion opportunities available to optometry businesses; it limited their bargaining power with suppliers and it prevented access to capital resulting in undercapitalised optometry businesses. According to Buchanan the lack of access to capital also limited successful entry, by previously disadvantaged individuals, into the optometry market.

Having considered the arguments raised by Buchanan and the respondents, the Tribunal found that there was *“no cogent evidence before us that allowing corporates to own optometry practices and integrate through the supply chain will significantly improve competition in the retail optometry market”…* *Nor do we have any empirical or other evidence that allowing corporate ownership will result in lower prices for the consumer*.” The Tribunal added that some of the alleged benefits associated with corporate ownership were realisable through other means, such as franchising and group networks. Accordingly there was no compelling evidence, specifically empirical evidence, of a substantial prevention or lessening of competition in the relevant market as a result of Mr Buchanan’s complaints.

Regarding access to capital by new entrants, the Tribunal found that there were various sources of capital that optometry practices could look to and so they weren’t reliant solely on lay or corporate funding. These included franchisors, suppliers and banks. Therefore the Tribunal concluded that there was not sufficient evidence to prove that the alleged lack of free capital flow had a significant adverse effect on competition in this market.

The Tribunal stressed however that its ruling was confined to the evidence before it on the competition effects of the rule complained of and did not purport to rule on any policy considerations of lay or corporate ownership in the optometry market or any other market for professional services in South Africa.

The Tribunal’s full judgment is available on the website: [www.comptrib.co.za](http://www.comptrib.co.za).

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