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26 October, 2016

**Fit-SA has been granted right to amend its application against Virgin Active and Planet Fitness**

The Tribunal has today (Wednesday, 26 October) ordered that Fit-SA be granted leave to amend its complaint referral affidavit, after the amended application proved to have not cured the deficiencies highlighted by Virgin Active and Planet Fitness.

On 14 September 2015, Fit-SA filed a complaint with the Competition Commission wherein it alleged that Discovery Health Medical Scheme (“DHMS”), Discovery Health Proprietary Limited, Discovery Vitality Proprietary Limited, Virgin Active South Africa Proprietary Limited (“Virgin Active”) and Planet Fitness Holdings Proprietary Limited (“Planet Fitness”) had been engaged in exclusive agreements in contravention of section 5(1) and 8(c) of the Act.

In particular, this complaint concerned agreements that Discovery has concluded with Virgin Active and Planet Fitness, in terms of which Discovery subsidises its member’s gym fees at each of these gyms respectively. Fit-SA was of the view that this impaired the ability of other independent gyms from competing as they are unable to match the significantly reduced rates offered to prospective gym members.

However, the Competition Commission elected not to refer the case to the Tribunal and as such on 04 November 2015, Fit-SA self-referred the above complaint to the Tribunal.

On 21 September 2016, Fit-SA appeared before the Tribunal and sought to amend its complaint referral through the insertion of new prayers as well as the inclusion of a supplementary affidavit. Virgin Active and Planet Fitness opposed the application on a number of grounds and sought that the application be dismissed with costs. Following a full day of hearing, Fit-SA conceded that its papers needed further amendment.

In relation to the issue of costs, the Tribunal has ordered that Fit-SA pay the costs of Virgin Active and Planet Fitness, on a party and party scale, including the cost of one counsel.

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