
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

ECONOMIC DEVELOPMENT DEPARTMENT**NOTICE 32 OF 2016****COMPETITION COMMISSION****NOTICE IN TERMS OF ITEM 4(C) OF SCHEDULE 1, PART A OF THE COMPETITION ACT 89
OF 1998 (AS AMENDED): CBE EXEMPTION REJECTION NOTICE**

The Competition Commission ("the Commission") received six (6) exemption applications from the Council for the Built Environment ("the CBE"). The CBE is a statutory body established in terms of Section 2 of the Council for the Built Environment Act No. 43 of 2000, as amended ("the CBE Act"). The CBE regulates and oversees the activities of six professional councils within the built environment, namely, the Engineering Council of South Africa ("ECSA"); the South African Council for the Quantity Surveying Profession ("SACQSP"); the South African Council for the Architectural Profession ("SACAP"); the South African Council for Property Valuers Profession ("SACPVP"); the South African Council for the Landscape Architectural Profession ("SACLAP") and the South African Council for the Project and Construction Management Professions ("SACPCMP").

The CBE sought exemptions for the rules of the above-mentioned professional councils relating to what is referred to in the applications as "the Identification of Work" ("the IDOW Rules") from the provisions of Chapter 2 of the Competition Act No. 89 of 1998, as amended ("the Competition Act"). The IDOW Rules provide for the reservation of work for registered persons with a certain level of competency, skills and academic qualification in their respective professions.

The CBE filed the exemption applications in terms of Schedule 1, Part A, read with Part B of the Competition Act. The applications are based on the premise that the IDOW Rules are (1) necessary to maintain professional standards or the ordinary function of the profession. The applications cited issues of public health and safety risks, financial risks and information asymmetry between persons offering the built environment professional services and final consumers; and (2) provided for in the legislative framework of the Built Environment. In particular, the CBE relies on section 4(q) of the CBE Act, which gives it the responsibility to liaise with the Commission on behalf of the professional councils regarding the development and implementation of the IDOW Rules.

Notice is hereby given in terms of Item 4(a) to (c) of Schedule 1 of the Competition Act that the Commission has rejected the exemption applications filed by the CBE.

It should however be noted that the SACAP exemption application is yet to be decided by the Commission.

In refusing to grant the exemptions, the Commission concluded that the IDOW Rules of each of the aforementioned professional councils in their current form are likely to harm competition in the following ways:

1. *Restriction of competition between registered and unregistered persons.* The Commission found that once the IDOW Rules are implemented, unregistered persons will not be allowed to undertake work or offer services reserved for the persons registered with their respective professional councils. This exclusionary act will exist regardless of the academic qualifications, practical experience and skills acquired by the unregistered persons;
2. *Restriction of competition between persons registered in different professional councils within the CBE.* The IDOW Rules identify work reserved for persons registered with each member council of the CBE. To the extent that persons registered with other professional councils wish to compete with each other, they will only do so within the parameters of the Memoranda of Understanding to be concluded between those professional councils;
3. *Restriction of competition between persons registered with the CBE and persons registered with other professional councils outside the built environment.* Upon the implementation of IDOW Rules, persons outside the built environment but competent to undertake work reserved for persons within the CBE will be prohibited from undertaking such work unless they register with respective built environment professional councils.
4. *Restriction of competition between persons registered with the CBE but in different registration categories.* The IDOW Rules create different categories of registration and then allocate work to those categories. The Commission found that once the IDOW Rules are implemented, persons registered within specified categories of registration will not be allowed to undertake work outside their category of registration even if they are competent to undertake such work.

The Commission concluded that the restrictions imposed by the IDOW Rules will reduce the number of persons operating in the relevant market. The reduction in the number of persons is likely to increase the selling price and reduce the quantity of the service supplied in the market. The Commission also concluded that the restrictions imposed by the IDOW Rules have some element of market allocation in contravention of section 4(1)(b)(ii) of the Competition Act.

The Commission also found that there are existing regulations or legislations in the sector that cater for public health, safety and financial risks associated with the work undertaken within the built

environment. The Commission is therefore of the view that these regulations, if used effectively, should suffice in protecting consumers of the built environment professional services from any wrong doing or underperformance by persons offering engineering services.

Furthermore the Commission found that the proposed IDOW Rules are not in line with international best practice. Thus, whilst the degree of regulation of the built environment professions internationally varies, the Commission found that South Africa has opted for the most comprehensive approach, which totally regulates the professions (for example, the regulation of title, practice and identification of work for registered persons).

In accordance with the provisions of Item 8 of Part A of Schedule 1 of the Competition Act, further notice is hereby given to the CBE and aforesaid professional councils, or any other person with a substantial interest affected by the decision of the Commission that they may appeal against that decision to the Competition Tribunal (“the Tribunal”) in the prescribed manner.

For any further clarification please contact either:

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In all correspondences kindly refer to specific professional councils as they appear in the above.