

---

**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

---

**ECONOMIC DEVELOPMENT DEPARTMENT****NOTICE 2 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): FEE GUIDELINES EXEMPTION REJECTION NOTICE**

The Competition Commission ("the Commission") received six (6) exemption applications from the professional councils within the built environment during the course of 2014. The exemption applications relate to the publication of the fee guidelines by the following professional councils, 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 abovementioned professional councils sought the Commission to exempt their rules relating to the publication of the fee guidelines from the provisions of Chapter 2 of the Competition Act No, 89 of 1998, as amended ("the Competition Act").

The exemption applications were filed in terms of Schedule 1, Part A, read with Part B of the Competition Act. The applications are based on the premise that the publication of the fee guidelines is necessary for the following: (1) maintain professional standards or the ordinary function of the profession. The professional councils argued that there is information asymmetry between consumers and persons offering services within the built environment. They argued that the publication of the fee guidelines will prevent overcharging as consumers are not familiar with all the services that are being offered within the built environment as well as prices charged by their members; and (2) provided for in the legislations of each of the professional councils. The professional councils argued that in terms of their legislation, they are required to determine the guidelines for professional fees and publish the same in the Government Gazette on an annual basis.

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

In refusing to grant an exemption, the Commission concluded that the fee guidelines in their current form are likely to harm competition in the following ways:

1. The publication of the fee guidelines by the professional councils amount to price-fixing in contravention of section 4(1)(b)(i) of the Act. The Commission concluded that persons offering their services within the built environment will make use of the fee guidelines as a benchmark when negotiating their fees with consumers. This reduces price competition in the market and also results in prices within the built environment being set above a competitive level to the detriment of consumers.
2. Further the Commission concluded that the publication of the fee guidelines is not in line with international best practice. A review of international best practice conducted by the Commission revealed that building industries in other jurisdictions are moving away from the practice of publishing the fee guidelines. This is an attempt in those countries to increase price competition in the market.

In accordance with the provisions of Item 8 of Part A of Schedule 1 of the Competition Act, further notice is hereby given to each professional council 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:

Mr Mbongiseni Ndlovu / Mr Shadrack Rambau  
The Competition Commission of SA  
Enforcement and Exemptions Division,  
Private Bag X23,  
Lynnwood Ridge, 0040

Tel: (012)394 5165 / (012)394 3263

Email: mbongisenin@compcom.co.za or shadrackr@compcom.co.za

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