

Notice CC 11 (2)

About this Notice

- This notice is issued in terms of Schedule 1 of the Competition Act.
- You, or any other person with a substantial material interest affected by this decision, may appeal this decision to the Competition Tribunal within 20 business days after it has been published in the Gazette.
- You must use form CT7 to lodge an appeal. Please refer to Competition Tribunal Rule 38.

Rejection of Application (Schedule I)

Date: 20 January 2016

To:

(Name of applicant and file number :)
Mr Edgar Sabela
The Engineering Council of South Africa (**Case Number:2014Apr0123**)

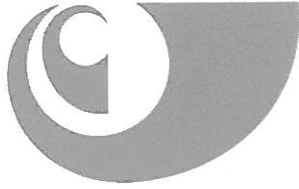
You applied to the Competition Commission on **01 April 2014** for an exemption in terms of Schedule 1 of the Act, for your Association's Professional Rules

After reviewing the information you provided, and consulting as required by the Act, the Competition Commission has concluded that the rules of your association fail to meet the requirements set out in item 2 of Schedule 1 of the Act, and therefore rejects your application for the reasons set out in the attached Reasons for Decision.

Name and Title of person authorised to sign on behalf of the Competition Commission:

Nompucuko Nontombana (Divisional Manager: Enforcement and Exemptions)

Authorised Signature:



competitioncommission
south africa

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Our Reference: 2014APR0123

20 January 2016

Mr. Edgar Sabela

The Engineering Council of South Africa ("ECSA")

Private Bag x691

Bruma2026

By email: lerato@ecsa.co.za

Dear Mr. Sabela

THE EXEMPTION APPLICATIONS IN RESPECT OF THE IDENTIFICATION OF WORK DRAFT POLICIES ("IDOW") OF THE BUILT ENVIRONMENT PROFESSIONAL COUNCILS (CASE NUMBER: 2014APR0123,)

1. We refer to the exemption application filed by the Council for the Built Environment ("CBE") on 01 April 2014 on behalf of the Engineering Council of South Africa ("ECSA") The exemption application relates to the Identification of Work ("IDOW") Rules for which ECSA sought to be exempted in terms of Schedule 1 from the provisions of Chapter 2 of the Competition Act, No. 89 of 1998, as amended ("the Act")
2. Kindly be advised that the Competition Commission ("the Commission") has finalised its evaluation of the abovementioned exemption application. As such, the Commission has decided not to grant ECSA an exemption, in terms of Item 4(a) to (c) of Schedule 1 of the Act.

3. In refusing to grant an exemption, the Commission concluded that ECSA's IDOW Rules in their current form are likely to harm competition in the following ways:
 - 3.1. *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;
 - 3.2. *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;
 - 3.3. *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.
 - 3.4. *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.
4. 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.

5. 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 engineering work. The Commission is therefore of the view that these regulations, if used effectively, should suffice in protecting consumers of engineering services from any wrong doing or underperformance by professionals.
6. 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 engineering professions internationally varies, the Commission found that South Africa has opted for the most comprehensive approach, which totally regulates the engineering profession (for example, the regulation of title, practice and identification of work for registered professionals).
7. In the circumstances, please find attached hereto a Form CC 11(2), which is a Notice of Rejection of the Application.
8. In accordance with the provisions of Item 8 of Part A of Schedule 1 of the Act, kindly note that should ECSA/CBE or any other person with a substantial interest affected by the decision of the Commission, disagree with the decision they may appeal against that decision to the Competition Tribunal ("the Tribunal") in the prescribed manner.

Yours faithfully



NOMPUCUKO NONTOMBANA

MANAGER: ENFORCEMENT AND EXEMPTIONS

TEL: (012) 394 3465