

Enquiries: T Singh
Tel: (011) 607-9594
E-mail: legal@ecsa.co.za
Website: www.ecsa.co.za

10 April 2015

Dear Stakeholder

SUBJECT: EXEMPTION APPLICATIONS - THE COMPETITION COMMISSION (CC) OF SOUTH AFRICA

1. Professional Fee Guidelines

- 1.1 The Competition Commission (CC) is currently assessing two separate exemption applications filed for ECSA. The first exemption application relates to the publication of Professional Fee Guidelines ("the Fee Guidelines"). The Fee Guidelines exemption application was filed in terms of Schedule 1 Part A read with Part B of the Competition Act 89 of 1998, as amended ("the Competition Act").
- 1.2 ECSA's Fee Guidelines are mandated by section 34 of the Engineering Profession Act, 46 of 2000 and are published with the intention to serve as guidelines to professionals within the engineering profession in respect of the fees charged for their services to consumers. In addition, ECSA's Fee Guidelines are intended to serve as guidelines to consumers when they procure professional services from ECSA's registered persons.
- 1.3 The CC will only pronounce the status of the exemption application for the Fee Guidelines after finalizing the consultation process on the exemption application for the Draft Identification of Engineering Work (IDOEW) Regulations, which appears in 1.2 below.

2. Draft Identification of Engineering Work Regulations

- 2.1 The second exemption application filed with the CC was filed by the Council for the Built Environment ("the CBE") on behalf of ECSA and it relates to the Identification of Work ("IDOW") rules of ECSA. The IDOW is a policy instrument that was developed by ECSA to regulate the work that professionals falling under the engineering profession are allowed to undertake, based on the professional's skills and competencies. The IDOW exemption application was also filed under Schedule 1 Part A read with Part B of the Competition Act.
- 2.2 By identifying work for different registration categories, ECSA's IDOW rules may result in substantial lessening of competition in contravention of provisions of Chapter 2 of the Act. On that basis, the CBE and/or ECSA have applied for an exemption in terms of Schedule 1 of the Competition Act.
- 2.3 ECSA seeks to be exempted from the provisions of Chapter 2 of the Competition Act on the basis that both the Fee Guidelines and the IDOW are reasonably required to maintain (i) the professional standards and (ii) the ordinary function of the profession as provided for in terms of Schedule 1 Part A (2) of the Competition Act.

In terms of Schedule 1 Part A (2) of the Competition Act:

“The Competition Commission may exempt all or part of the rules of a professional association from the provisions of Part A of Chapter 2 of the Competition Act for a specified period if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of substantially preventing or lessening competition in a market is reasonably required to maintain-

- (a) professional standards; or*
- (b) the ordinary function of the profession.”*

2.4 As part of the evaluation process, the CC is currently consulting with stakeholders within the built environment and other parties who are likely to be affected by these applications. The CC informed ECSA in January that they intend to complete the process as far as the exemption application for the IDOW is concerned by end of March 2015.

ECSA has requested a status update from the CC, which will be posted on the ECSA website in due course.

We trust you find the above in order.

Yours sincerely



Adv L Brimah
MANAGER: LEGAL SERVICES