

Competition Interventions in the Architectural Profession: Experience of the Competition Commission of South Africa

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Barriers to Competition in Professional Services –
Measurement and Reform Experience

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Professional Services in South Africa

- Professional services in South Africa are highly regulated both by the government and through self-regulation
- Professional services set up councils or associations to enforce regulation
- Statutes that regulate the professional services empower the councils or associations to -
 - ❑ determine professional fees, and
 - ❑ identify the scope of work for every category of registered persons within the profession.

Commission's Interventions in Professional Services

- The Commission's interventions in professional services began as early as 2004
- To date, the Commission has intervened in the following professional services:
 - Attorney's profession;
 - Natural Scientists profession;
 - Estate Agents;
 - Medical profession; and
 - Built Environment Profession

Commission's Intervention in the Architectural Profession

- Commission has been influential in the development of reforms that are aimed at -
 - ❑ limiting barriers to entry in the market,
 - ❑ promoting competition and
 - ❑ transforming markets to ensure greater participation of historically disadvantaged individuals and small and medium-sized firms

Background into Commission's Intervention in the Architectural Profession

- 2011 the Commission received exemption applications from the CBE on behalf of the professional councils including the SACAP
- First category related to the IDoW
 - which identifies and categorises the types of work that can be undertaken by registered Architectural professionals based on their educational level, relevant experience, skills level, and record in continuing professional development
- Second category related to the publication of professional guidelines fees

Background into Commission's Intervention in the Architectural Profession

- Commission found that the IDOW policy would -
 - ❑ eliminate competition between registered and unregistered architectural persons;
 - ❑ eliminate competition between registered Architectural professionals and other professionals registered under CBE;
 - ❑ eliminate competition between registered Architectural professionals and professionals outside the built environment; and
 - ❑ elimination of competition between different Architectural categories
- Commission rejected the exemption application related to the IDoW

Background into Commission's Intervention in the Architectural Profession (2)

- Commission found that professional guidelines fees would cause professional fees to –
 - ❑ converge towards the recommended fees
 - ❑ reduce price competition between professionals thereby resulting in higher prices to the detriment of consumers
 - ❑ enable competitors to guess the fee that would be charged by its competitors when tendering thereby result in excessive discounting in order to win tenders.
- Commission rejected the exemption application related to the professional guideline fees

The Regulatory Dilemma!

- CBE Act impels CBE to determine the Identification of Work (IDoW)
- Professional Councils including SACAP are required to submit recommendations to the CBE on the scope of work identified for every category of registered persons
- CBE Act obligates CBE consult with the Commission or at the very least, to consider competition laws in exercising its powers
- Neither the CBE nor SACAP have a specific mandate to regulate competition
- Mandate to regulate competition in the South African economy rests solely with the Competition Authorities
- Regulatory Clash: Sector Regulation vs Competition Regulation

Consequences of the Regulatory Dilemma

- The Built Environment rejected the Commission's decision
- SACAP proceeded to publish the IDOW in 2019, in complete disregard of the Commission's decision
- Following the publication of the IDoW in 2019, the Commission was inundated with complaints against SACAP
 - ❑ Alleged that IDoW was exclusionary - prevented Professional Architectural Draughtspersons from undertaking complex projects which they were previously able to undertake.

Commission's Enforcement

- The Commission's investigation revealed the precise issues raised by the Commission previously
- This presented an opportunity for SACAP to once again engage the Commission
- These engagements became important to enable SACAP to -
 - ❑ implement the IDOW in a manner that is inclusive and promotes adequate competition in the market and
 - ❑ determine guideline professional fees in a manner that does not contravene the Competition Act

Pro-Competitive Reforms by SACAP - IDoW

- SACAP introduced mechanisms that would enable professionals to -
 - continue doing work outside of their category of registration and
 - move up to higher categories.
- These mechanisms include:
 - Recognition of Prior Learning
 - The Special Consent
 - The Special Limited Dispensation
 - The Transitional Provision
- Mechanisms were subjected to an application process for which application fees were payable
- Commission found that the application fees were too high and posed a significant financial barrier particularly for Small and Medium sized enterprises

SACAP Fees Structure

RECOGNITION OF PRIOR LEARNING (RPL) ASSESSMENT	2020	2021
Professional Senior Architectural Technologist (PSAT) to Professional Architect (PrArch)	R14 000.00	R7 000
Professional Architectural Technologist (PAT) to Professional Senior Architectural Technologist (PSAT)	R12 000.00	R4 000
Professional Architectural Draughtsperson (PAD) to Professional Architectural Technologist (PAT)	R9 000.00	R2 500
Special Consent and Limited Special Dispensation		
Application / Assessment	R9 000.00	R7 000 PSAT R4 000 PAT R2 500 PAD

Advocating for Greater Reforms



competition commission
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- The IDOW policy only allows registered professionals to undertake architectural work - excludes unregistered persons
- Barriers – both systematic and financial pertaining to the registration that make it difficult for people to register including annual fees and other *ad hoc* costs
- Exclusion of students with varying qualifications that emerge from the various types of institutions of higher learning in South Africa but have similar competencies
- The composition of Panel of Assessors which comprises largely of practicing professionals that may have incentives to restrict competition in order to protect their own commercial interest

Advocating for Greater Reforms (2)

- To address these issues, the Commission has proposed additional reforms

which include:

- ❑ the inclusion of unregistered persons in the sector through advocacy initiatives aimed at policy and legislative amendments
- ❑ the incorporation of other qualifications which may not be currently recognised by SACAP but which provide professionals the same educational competence and
- ❑ the diversification of the Panel of Assessors to include more academics, retired professionals, and independent persons who are not affiliated to any Council, for purposes of maintaining the independence of the Panel of Assessors

CO-OPERATING FOR EFFECTIVE REGULATION

- The growing number of competition issues in the Architectural profession have called for greater co-operation between the Commission and SACAP in order to strengthen competition regulation in the sector
- To improve regulation of the Architectural profession, the Commission and SACAP have concluded a Memorandum of Understanding (MOU).
- The MOU is aimed at enabling the Commission and SACAP to -
 - ❑ collaborate on efforts to promote competition in the Architectural profession and
 - ❑ collectively work towards addressing the outstanding issues

CONCLUSION

- The experience in South Africa has shown that competition advocacy has had a great influence on regulatory reforms in the Architectural profession
- Collaboration between the Commission and SACAP has to date been very instrumental in strengthening regulation in the market
- Similar interventions will be helpful in ensuring alignment between competition regulation and regulations governing other professional services

Thank You

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