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CIRCULAR ON THE ANTI-COMPETITIVE EFFECTS OF THE RULES AND REGULATIONS BY HOMEOWNER ASSOCIATIONS AND/OR BODY CORPORATES ON ARCHITECTURAL SERVICES RENDERED IN RESIDENTIAL ESTATES

1. INTRODUCTION

- 1.1. Competition in the market is good for consumers in that it enables them to choose from various alternative suppliers of goods and services. Competition also allows new businesses to enter the market. This encourages businesses to offer lower prices and better quality of goods and services to the benefit of consumers.
- 1.2. The Competition Commission (“Commission”) and South African Council for the Architectural Profession (“SACAP”) have been receiving numerous complaints from residents and registered professionals in the architectural profession (i.e., Professional Architectural Draughtspersons (“PAD”), Professional Architectural Technologists (“PAT”) and Professional Senior Architectural Technologists (“PSAT”)) against various residential estates countrywide. The complaints received by the Commission and SACAP assert that Homeowner Associations and/or Body Corporates are setting rules and regulations that prohibits PADs, PATs and PSATs from designing plans for residents in those estates. It appears that the rules and regulations of certain estates only allow Professional Architects (“PrArch”) to design plans for residents thereby

preventing all other categories of registration from providing architectural services in those estates.

- 1.3. The rules and regulations disregard the fact that persons registered as PADs, PATs and PSATs with SACAP are qualified and competent to undertake designs and prepare plans in terms of the Architectural Profession Act¹ and as prescribed by the Identification of Work policy ("IDoW"). The Commission found that the rules and regulations restrict competition in two ways, 1) they prevent other categories of registration from entering the market and consequently, limit competition between the Architectural Professionals and 2) they limit consumer choice as residents are required to use the services of PrArchs that have been approved by these residential estates.

2. THE EFFECTS OF THE CONDUCT ON COMPETITION AND THE RELEVANT PROVISIONS OF THE COMPETITION ACT

- 2.1. The conduct is harmful to both residents and the Architectural Professionals who are being excluded from rendering their services within these residential estates. Residents are not able to select service providers of their choices and are being forced to make use of only PrArchs who have been selected and allowed to operate within the estates by the Homeowner Associations and/or Body Corporates. Such conduct inhibits residents from negotiating the price that PrArchs charge for their architectural services. Residents are therefore required to accept whatever price that PrArchs charge for rendering their services within the residential estates, which prices are likely to be higher given that the PrArchs face little or no competition at all. The conduct is also harmful to PADs, PATs and PSATs who are being prevented from offering their services to customers residing in those residential estates.
3. These rules and regulations by Homeowner Associations and/or Body Corporates are not only exclusionary, but they also have the effect of substantially preventing and lessening competition in the market in possible contravention of sections 8(c) and 5(1) of the Competition Act². This can also amount to market allocation in contravention of section 4 of the Competition Act in cases where the Homeowner Associations and/or Body Corporates are found to have utilised the services of PrArchs to draft these rules and regulations. Anyone who will be found guilty of contravening any of the aforesaid

¹ No. 44 of 2000.

² No. 89 of 1998.

provisions of the Competition Act will be subject to prosecution at the Competition Tribunal of having engaged in anti-competitive conduct.

4. THE PURPOSE OF THE CIRCULAR

4.1. The purpose of this circular is to:

4.1.1. Advise the Homeowner Associations and/or Body Corporates to comply with the provisions of the Competition Act and to refrain from engaging in conduct that has the effect to significantly preventing or lessening competition in the market.

4.1.2. Advise Homeowner Associations and/or Body Corporates to ensure that their rules and regulations comply with the provisions of the Competition Act and encourage equitable and fair competition.

4.1.3. Advise the Homeowner Associations and/or Body Corporates to apply the SACAP's IDoW policy as is prescribed.

4.1.4. Advise Homeowner Associations and/or Body Corporates to ensure that they follow a competitive process if they wish to select a pool of Architectural Professionals to provide architectural services in the residential estates. The process should be inclusive to enable service providers across the various categories of registration to submit their proposals and compete fairly against each other in the market. Homeowner Associations and/or Body Corporates should also ensure that the pool of Architectural Professionals is large and diverse enough to encourage healthy competition to the benefit of consumers.

4.1.5. Advise Homeowners Associations and/or Body Corporates to limit the duration of the contractual period of Architectural Professionals to a period between 1 and 2 years, and to resume new competitive process at the end of each contractual period.

5. SCOPE AND APPLICATION

5.1. This circular applies to Homeowner Associations and/or Body Corporates of all residential estates within the Republic of South Africa.

6. CONCLUSION

6.1. The Commission will not hesitate to prosecute those that engage in practices that contravene the Competition Act. Homeowner Associations and Body Corporates are therefore required to ensure compliance with this circular and that their rules and regulations do not infringe any of the provisions of the Competition Act.

Yours Sincerely



Mr Tembinkosi Bonakele

Commissioner

Competition Commission

Mr Ntsindiso Charles Nduku

President

South African Council for the Architectural Profession