

## **Media Release**

**14 March 2011**

### **Commission rejects Law Society of South Africa Application for Exemption**

The Competition Commission has rejected the Law Society of South Africa (LSSA) application for exemption from the provisions of Chapter 2 of the Competition Act, 1998 (Act 89 of 1998) ("the Act"), (see Government Gazette 34051 dated 04 March 2011 (Notice 113 of 2011)).

The LSSA sought an exemption from the Act for its rules on professional fees; reserved work; organisational forms and multi-disciplinary practices; and advertising, marketing and touting. The exemption was rejected based on the following reasons:

#### **1. Professional fees**

This category of rules prohibits attorneys to accept remuneration for professional services other than that at the tariff prescribed by law. The Commission found that this is tantamount to price fixing which is in contravention of the Act. As such, legal practitioners are not allowed to discount below the set fees, thus inhibiting price competition. While the current rules purport to protect the public from over-reaching or exorbitant legal costs the setting of minimum restricts price competition. One mechanism to protect the public from exorbitant legal fees might include setting of price caps or ceilings.

#### **2. Reserved work**

The rules under this category prohibit practitioners from:

- Allowing or assisting any unqualified person to obtain payment for any professional work that only attorneys may do; and
- Referring work to persons prohibited from performing such reserved work.

The Commission found that these rules should not be exempted because they were likely to harm competition as they prevent other competent service providers from providing legal services to the public. Further, it restricts the number of service providers which in turn limits consumers' choice.

#### **3. Organizational forms and multi-disciplinary practices**

Rules under this category prohibit practitioners from sharing fees and offices with non-practicing attorneys. The Commission found these rules were too wide and tend to prevent innovation and development of a fair competitive environment.

#### **4. Advertising, marketing and touting**

Under this category of rules practitioners are prohibited from using certain acts of advertising and marketing which are regarded as unprofessional, dishonourable and unworthy conduct. The Commission found that these restrictions were not necessary for the maintenance of professional standards as they extended beyond standard advertising norms. It is also in the consumers' interests to lift these restrictions on advertising.

The Commission recognise that in principle it may be necessary to restrict competition to maintain professional standards or to protect the public. However, the current rules as crafted

are too wide and need to be adjusted. It is against this background that the Commission has engaged the Law Society to redraft the rules in manner compatible with competition principles.

The Commission and the LSSA entered into a process of engagement and consultation to resolve the Commission's concerns and to facilitate the continued regulation of the attorneys' profession, and this process continues. The rules that were the subject of the exemption application will soon be replaced or amended by the uniform rules of practice which are anticipated to come into effect by operation of the Legal Practice Bill. The Commission is currently engaging the Department of Justice and Constitutional Development on the new Legal Practice Bill.

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## **Background**

The Law Society of South Africa ("LSSA") filed an application for the exemption of its professional rules in terms of Schedule 1 of the Competition Act 89 of 1998, as amended ("the Act") in 2004. In terms of the Competition Act no.89 of 1998 Schedule 1 Part A, a professional association may apply for exemption of its rules if they have the effect of substantially preventing or lessening competition in a market. The Commission may exempt all or part of the rules from the provisions of Chapter 2 for a specified period if, taking into account international norms, the rule is reasonably required to maintain professional standards or the ordinary function of the profession.

The categories of rules for which it applied for exemption are as follows:

- Professional fees
- Reserved Work
- Organisational forms and multi-disciplinary practices
- Advertising, marketing and touting

The Commission consulted various stakeholders within the legal fraternity, including the Department of Justice and Constitutional Development, to solicit their opinions on the exemption application. In addition, it conducted research to ascertain the manner in which other jurisdictions deal with the rules for the legal profession.