

## Annexure A

### **Commission seeks Tribunal order against construction CLP applicants, Concor and WBHO**

On 16 and 17 February 2016, the Competition Commission (Commission) referred two matters to the Competition Tribunal (Tribunal) against Concor (Pty) Ltd (Concor), a subsidiary of Murray & Roberts Ltd (Murray & Roberts) and WBHO Construction (Pty) Ltd (WBHO), respectively.

The Commission seeks an order from the Tribunal declaring that Concor and WBHO, respectively, have engaged in collusive tendering in contravention of section 4(1)(b)(iii) of the Competition Act, 89 of 1998, as amended (the Act). This relates to construction projects for which they applied for leniency under the Construction Fast Track Settlement process (the fast track process). The Commission granted Concor and WBHO conditional immunity.

The fast track process stemmed from the *Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Competition Act* (the Invitation) which was issued by the Commission on 1 February 2011. In response to the Invitation, Concor and WBHO disclosed projects where each of them was involved in collusive tendering. Concor and WBHO were first to disclose some projects and not first to disclose others. They settled with the Commission on projects which they were not first to disclose and the Commission granted them conditional immunity in respect of projects which they were first to disclose.

These referrals relate to projects which Concor and WBHO were granted conditional immunity. The Commission referred Concor and WBHO to the Tribunal in order to obtain declaratory orders that Concor and WBHO have contravened section 4(1)(b)(iii) of the Act in respect of projects for which they were granted conditional immunity. A finding or declaratory order by the Tribunal that a firm has engaged in a prohibited practice is a prerequisite for bringing a civil claim for damages against a firm that participated in cartel conduct. Accordingly, the Commission has brought the present applications in order to safeguard and preserve the rights of affected third parties to bring civil damages claims.

The Commission is embarking on this process because the parties could not reach an agreement in terms of which both Concor and WBHO consent to a voluntarily process of obtaining a Tribunal declaratory order that they have contravened section 4(1)(b)(iii) of the Act in respect of projects for which the Commission granted them conditional immunity.

Ends

#### **For more information:**

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