

MEDIA RELEASE

1 February 2011

Competition Commission invites construction firms to settle

The Competition Commission (the 'Commission') today announced a "fast track settlement" for firms in the construction sector who have been party to collusive practices in bidding for projects in the public and private sectors. Construction firms are invited to apply for fast-track settlement with complete and truthful disclosure of information regarding collusion. In addition the firm must undertake to cooperate and cease anti-competitive conduct. Upon complying with the requirements, the Commission will settle with participating firms with a reduced administrative penalty compared to the penalty if each transgression were to be prosecuted separately.

The Commission's investigation in the construction industry has uncovered widespread anti-competitive conduct through various arrangements. Major firms in the sector, for example, have held meetings to allocate tenders and police each other's behaviour through a structure referred to as 'The Party'.

It is against this background that the Commission has devised a fast-track settlement procedure to incentivise firms to enter into a comprehensive settlement that is financially advantageous. It aims to minimise the associated legal costs and speedily resolve cases. Further, the process will strengthen evidence against those firms not taking advantage of this initiative.

The Commission is currently investigating 65 bid rigging cases in the construction sector implicating over 70 projects with an estimated value of R29 billion. Further, markets for construction products such as long steel, mining roof bolts, concrete pipes, plastic pipes, wire-mesh, reinforcing steelbar installation and pilings construction have also been investigated. Subsidiaries of several major construction companies are involved in these cartels. A case against the primary producers of reinforcing steel bar (the steel mills) was previously referred to the Tribunal. The Commission will soon be referring cases in rebar and pilings.

In addition, 150 marker applications (indicating an intention to apply for corporate leniency), some relating to more than one project, have been received by the Commission. Most of these corporate leniency applications were submitted by Group Five which has been cooperating with the Commission since 2009. In addition, applications were received from Grinaker- LTA and Murray & Roberts, who have committed to cooperate with the Commission.

The fast-track settlement process will work concurrently with the Commission's Corporate Leniency Policy (CLP). A firm that applies for settlement may also apply for leniency. The provisions of the CLP process will then apply. A firm that has received conditional immunity for a particular conduct will not pay a penalty for it in terms of the settlement process.

For the purpose of calculating the penalty in each of the 6 main construction sub-sectors delineated by the Construction Industry Development Board, the following factors will be taken into account:

- the number of contraventions in the relevant subsector;
- whether or not the applicant won or lost the bid;
- the size of the contract(s); and

- whether the applicant has settled any claim for damages that may arise as a result of the non-prescribed prohibited practice.

Firms in the construction sector are invited to respond to this invitation in order to settle their bid-rigging and collusive conduct by making an application to the Commission by no later than **15 April 2011 at 12:00 pm**.

The procedure, forms, and substantive terms and conditions of the fast-track settlement process is set out in detail in the document "Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Competition Act" available on the Commission's website www.compcom.co.za. Alternatively, a copy can be obtained from the Commission's Registry at **77 Meintjies Street, dti Campus: Block C, Sunnyside, PRETORIA** or via email by writing to construction@compcom.co.za.

Should a firm fail to take advantage of this settlement procedure the Commission will prosecute and ask for the imposition of maximum penalties with respect to each project. Further, the Commission will advocate that Government cease conducting business with firms found guilty of collusion following a prosecution.

For any enquiries regarding the settlement process please contact Lemogang Moletsane on 012 394 3408, or by email, construction@compcom.co.za.

ENDS

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Background

The Competition Commission has taken a decision to implement a fast-track settlement process in the construction sector targeted at finalising investigations into the bid-rigging of projects. This is informed by the need to rid the sector of widespread and deeply-entrenched anti-competitive conduct in the context of some firms cooperating with the Commission but many others remaining in denial. Bid-rigging imposes costs on customers by artificially raising the cost of construction projects. It also undermines the competitive bidding process by deceiving customers into believing that they have received independent tenders for construction projects.

The Commission has been cognisant of the approach taken in other jurisdictions where such widespread conduct has been uncovered, such as the Netherlands and UK.

The Competition Commission has taken a proactive approach to construction as it was identified as a priority sector in recent years due to its importance for the economy. A number of investigations have either been finalised or are under investigation.

The Competition Act no.89 of 1998 (as amended) prohibits collusive tendering or bid-rigging in terms of section 4(1)(b)(iii). Bid-rigging or collusive tendering includes the rigging of particular bids, bid allocation and bid rotation over time. Furthermore, it includes the submission of cover bids and cover prices, agreements on tender prices and the allocation of bids to customers and/or territories.

On 10 February 2009 the Competition Commission (“the Commission”) initiated a complaint in terms of section 49B(1) of the Competition Act no.89 of 1998 (as amended) (“the Act”) into alleged prohibited practices relating to bid-rigging and collusion in the construction of the 2010 stadiums for the Soccer World Cup.

On 1 September 2009, following the receipt of applications for immunity in terms of the Commission’s Corporate Leniency Policy (“CLP”), the Commission initiated a complaint in terms of section 49B(1) of the Act into prohibited practices relating to bid rigging and collusion in the construction industry.

Based upon the investigations to date, it is evident that there were widespread contraventions of the Act, particularly section 4(1)(b). This has included referrals and settlements in cast concrete products, plastic pipes and reinforcing steel. There are also ongoing investigations in markets such as cement, bricks and pilings. Many of the firms that have been respondents in these cases are also alleged to be implicated in bid rigging of construction projects.

Recently the Competition Tribunal has sent a firm message by imposing the maximum penalty of 10% of total turnover on Southern Pipeline Contractors, which decided not to settle with the Commission but to contest the matter in the Tribunal. Where companies contest the Commission’s findings of hardcore cartel backed by leniency applications, the Tribunal, in this ruling, shows that it may impose the maximum allowable penalty.

Cartel conduct in the cutting, bending and installation of reinforcing steel involves many firms engaged in undertaking such work for construction projects. The coordination by these firms was organized by region, with firms agreeing on pricing and allocating business amongst themselves through regular meetings and discussions. Reinforcing Steel Contractors, part of Murray and Roberts Steel Pty Ltd, has been granted conditional leniency by the Commission. Reinforcing steel is used in a wide variety of construction projects. In addition, through the South African Reinforcing Concrete Engineers’ Association, reinforcing steel firms agreed on purchase prices and terms from the steel mills.