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# **3<sup>rd</sup> PPF ANNUAL SUMMIT 2015**

## **Corruption in the private sector**

**Commissioner Tembinkosi Bonakele**

**19 November 2015**

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# WHAT IS COLLUSION?



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- **Agreement amongst firms not to compete**
- **Firms include private and public companies, close corporations, partnerships and individuals**
- **Can take the form of price fixing, market allocation or collusive tendering**

# EFFECT OF COLLUSION



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- **Effect is to increase price and/ or reduce output**
- **Purpose is to maximise profits for businesses**
- **Competition is costly, cartels also avoid the costs and instability of competition**
- **Low income consumers and government are often hit hardest by collusion**



## PRICE FIXING

- **Agreement to fix prices for goods or services, or trading conditions**
- **Can occur directly or indirectly**
- **Often includes monitoring mechanism**

## MARKET ALLOCATION

- **Agreement to divide markets by:**
  - **allocating customers or suppliers;**
  - **allocating territories; or**
  - **allocating goods or services**

# COLLUSIVE TENDERING



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- **Agreement designed to determine outcome of bidding process**
- **Can take the form of cover pricing, bid rotation or bid suppression**
- **Circumvents the competitive nature of the bidding/ tender process**
- **Often found in construction, health and food sectors where firms compete for large projects/ contracts**

# COLLUSION AND CORRUPTION



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- **Corruption is abuse of public resources or public power for personal gain**
- **Examples include a business individual bribing a government official in order to be awarded a tender**
- **Bid rigging sometimes involves cooperation between firms and government officials**
- **Both are secretive and deceptive**
- **Both affect the growth of the economy**
- **Both serve as a barrier to entry**
- **Both distort/ circumvent the competitive bidding/ tendering process**

# Collusion IS Corruption?



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## Section 12(1) of the Prevention and Combatting of Corrupt Activities Act:

*“ 12 (1) Any person who, directly or indirectly-*

*(a) accepts or agrees or offers to accept any gratification from any other person whether for the benefit of himself or herself or for the benefit of that other person or of another person ; or*

*(b) gives or agrees or offers to give to any other person any gratification whether for the benefit of that other person or for the benefit of another person*

*(i) in order to improperly influence in any way-*

*(aa) the promotion, execution or procurement of any contract with public body, private organisation, corporate body or any other organisation or institution; or*

*(bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract....*

*Is guilty of the offence of corrupt activities relating to contracts”*

# COMMISSION'S EXPERIENCES



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- Over the years Commission has found cartel conduct in wide ranging sectors:

## FOOD & AGRO-PROCESSING

- Bread & milling (flour & maize)
- milk
- Canned fish
- Animal feed
- Fertilizers

# COMMISSION'S EXPERIENCES



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## INFRASTRUCTURE & CONSTRUCTION

- **Cement**
- **Pre-cast concrete slabs**
- **Plastic pipes**
- **Wire mesh**
- **Reinforcing bar**
- **Mining roof bolts**
- **Scrap metal**
- **Electric cables (currently under investigation)**
- **Fire control & protection systems (currently under investigation)**

# COMMISSION'S EXPERIENCES



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## AUTOMOTIVE

- **Auto body repair services (currently under investigation)**
- **Components suppliers (currently under investigation)**

## HEALTHCARE

- **Intravenous solutions**

## FINANCIAL SERVICE

- **Foreign currency market (currently under investigation)**

## ENERGY

- **LPG (currently under investigation)**
- **Petroleum**
- **Bitumen**

# COMMISSION'S EXPERIENCES



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## Some of the fines imposed:

- **Sasol**            **188 million (fertilizer)**
- **Sasol**            **111 million (polymers)**
- **Reclamation** **145 million (scrap metal)**
- **Afrisam**        **124 million (cement)**
- **Lafarge**        **149 million (cement)**
- **Adcock**        **53 million (healthcare)**
- **Aveng**           **46 million (concrete pipes)**
- **Aveng**           **21 million (mining roof bolts)**
- **Tiger brands** **98 million (bread & milling)**



# Bread Cartel

- **Commission initiated complaint based on information from informant**
- **Found that Premier (Blue Ribbon), Tiger Brands (Albany) and Pioneer (Sasko) had agreed:**
  - **to increase the price of bread**
  - **to coordinate the timing of price increases**
  - **not to poach each others' distributors**



# Pharmaceutical Cartel

- **Commission initiated complaint against Adcock Ingram, Dismed, Thusanong and Fresenius**
- **Found agreement:**
  - **to tender collusively for state contracts for the supply of intravenous healthcare products;**
  - **Divide the private hospital market amongst each other**
- **Effect:**
  - **State and private hospitals paid more**



# Construction Cartels

- Investigations revealed a long-standing cartel involving the four major cement producer- PPC, Lafarge, Afrisam & NPC-Cimpor
- PPC granted leniency; settlements concluded with Afrisam and Lafarge; Prosecuting NPC-Cimpor
- Wide ranging collusive tendering uncovered in the construction sector resulted in the Commission designing fast-track settlement process
- The process revealed over 300 instances of bid rigging mainly through cover pricing and payment of “loser’s fees”
- Recently concluded settlement agreements with major construction companies including M&R, WBHO, Stefanutti & Aveng
  - Paid collective penalties totalling R1.46 bn.

# CONCLUSION



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- **Majority of Commission's cases involve collusion among private sector firm**
- **Cartels are costly to the economy**
- **Impact assessment following dismantling of cement cartel shows savings of about 6 billion**
- **Cartels continue to occurred as evidence by the Commission's investigations in ,among others, foreign currency market, LPG, furniture removal & electric cables**



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**THANK YOU**