

## **Media Release**

26 October 2015

### **Competition Commission finalises its investigation of the construction sector**

Today, 26 October 2015, the Commission referred to the Competition Tribunal (Tribunal), the last case arising out of its investigation of bid rigging in the construction sector. The case is against WBHO Construction (Pty) Ltd which colluded with Group Five Construction (Pty) Ltd by fixing contractual conditions relating to the N17 link road between New Canada and Soccer City (N17 project).

The Commission's investigation found that, at a meeting of the South African Federation of Civil Engineering Contractors Association (SAFCEC), WBHO and Group Five agreed on a preferred set of contractual conditions for the N17 tender issued by the South African National Roads Agency Limited (SANRAL). On the basis of this agreement, they requested SAFCEC to approach SANRAL on their behalf, to demand that SANRAL change its tender conditions and issue the tender with the conditions they agreed about. This amounts to fixing of trading conditions which contravenes section 4(1)(b)(i) of the Act.

WBHO was notified of this project during the Construction Fast Track Settlement Process and was invited to settle but rejected the offer.

"This referral marks the end of the Commission's investigation of collusive conduct in the construction sector arising out of the fast track process. Our focus will now be on litigation of cases that were referred to the Tribunal for prosecution," says Commissioner Tembinkosi Bonakele.

"The construction sector remains one of the key sectors of the economy which government is prioritizing to drive infrastructure development. It is therefore necessary to address any collusive conduct which might inflate the costs of rolling out infrastructure development," added Commissioner Bonakele.

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## BACKGROUND TO THE CONSTRUCTION SECTOR INVESTIGATION

The Commission initiated investigations in the construction sector in 2009 after receiving evidence that collusion was pervasive in the sector. Subsequently, the Commission launched the Construction Fast Track Settlement Process (Fast Track Settlement) in February 2011 to expedite the resolution of these cases given their magnitude.

In 2013, the Commission settled with 15 out of 18 firms that participated in and were found liable under the Fast Track Settlement. The settlement agreements with the 15 firms were confirmed by the Tribunal in July 2013, with a combined total of R1.4bn in administrative penalties levied against these firms. The confirmation by the Tribunal of the consent agreements concluded with the 15 firms completed the Fast Track Settlement.

Table 1 below lists firms that settled with the Commission and the amount of the penalty levied per firm.

*Table 1*

<b>No</b>	<b>Firm</b>	<b>Settlement amount (ZAR)</b>
1.	Aveng	306 576 143
2.	Basil Read	94 936 248
3.	Esorfranki	155 850
4.	G Liviero	2 011 078
5.	Giuricich	3 552 568
6.	Haw & Inglis	45 314 041
7.	Hochtief	1 315 719
8.	Murray & Roberts	309 046 455
9.	Norvo	714 897
10.	Raubex	58 826 626
11.	Rumdel	17 127 465
12.	Stefanutti	306 892 664
13.	Tubular	2 634 667
14.	Vlaming	3 421 662
15.	WBHO	311 288 311
<b>TOTAL</b>		<b>1 463 814 392</b>

The Commission's investigation into collusive conduct in the construction sector continued into the second phase, referred to as the Phase Two Construction Investigations. The Phase Two Construction Investigations entailed the following:

- the investigation of firms that did not participate at all in the Fast Track Settlement but were implicated in certain projects by firms that participated in the Fast Track Settlement,

- the investigation of firms that participated in the Fast Track Settlement and settled certain projects but refused to settle some projects in which they were implicated; and
- the investigation of firms that participated in the Fast Track Settlement but refused to settle projects that they had disclosed in their Fast Track Settlement applications.

There were 24 firms that did not participate in the Fast Track Settlement but were implicated in collusive tendering by the firms that participated. These firms were implicated in 31 projects/cases.

The firms that participated in and settled under the Fast Track Settlement but refused to settle certain projects they were implicated in were Basil Read with 4 projects, WBHO with 4 projects, Raubex with 2 projects and Murray & Roberts with 1 project. The firms which participated in the Fast Track Settlement but refused to settle projects that they disclosed were WBHO with 1 project and Power Construction also with 1 project.

The Commission settled with some of the firms investigated under the Phase Two Construction Investigation, referred to the Tribunal for prosecution cases against those firms that did not settle. Also, the Commission decided not to prosecute cases against certain firms where there was insufficient evidence against them or where the firms had been liquidated.

### **Phase Two Construction Settlements**

In the Phase Two Construction Investigation, the Commission settled with seven (7) firms as outlined in the tables below. The combined settlement penalty paid by these firms was R13 441 008.97

*Table 2*

<b>Firm</b>	<b>No of projects</b>	<b>Name of the project</b>	<b>Amount</b>
Harding Allison Close Corporation	1	Renault Motor Company, Meridian Drive, Umhlanga contract	R78 821.94
B & E International (Pty) Ltd	1	Braamhoek Dam (Ingula) Crushing contract	R8 158 477
Cycad Pipelines (Pty) Ltd	1	The Thabazimbi (Northam) Pipeline project	R3 394 151
N17 Toll Operators (Pty) Ltd	1	N17 Tolling and Maintenance contract R424 121	R424 121
Civcon Construction (Pty) Ltd	1	South Deep Mine	R798 385.98
Giuricich Coastal Projects (Pty) Ltd	1	Uniliver	R149 429.31

Pele Kaofela (Civilcon) CC	1	Hartebeesfontein Water Care	R437 623.68
<b>TOTAL</b>			<b>R13 441 008.97</b>

### Phase Two Construction Referrals

In the Phase Two Construction Investigation, the Commission referred nineteen (19) cases, including 2010 FIFA World Cup stadia project, as outlined in table 3 below, to the Tribunal for prosecution. These cases are at various stages in the litigation process.

*Table 3*

<b>Firm</b>	<b>Projects</b>	<b>Date of referral to the Tribunal</b>
Edilcon Construction (Pty) Ltd	<ul style="list-style-type: none"> <li>• BATSA</li> <li>• New Warehouse</li> <li>• Elvira Rota</li> <li>• Merceds Benz</li> <li>• Centurion Mall</li> <li>• VW</li> </ul>	27 November 2014
GD Irons (Pty) Ltd	<ul style="list-style-type: none"> <li>• BATSA</li> </ul>	27 November 2014
Isipani	<ul style="list-style-type: none"> <li>• Tienie Louw</li> <li>• Stellenbosch University</li> </ul>	19 November 2014
Delatoy Investment (Pty) Ltd (Shearwater)	<ul style="list-style-type: none"> <li>• Thabazimbi Pipeline</li> </ul>	25 February 2015
Power Construction	<ul style="list-style-type: none"> <li>• N1 Touws River to Laingsburg</li> </ul>	17 December 2015
Afristruct Project (Pty) Ltd	<ul style="list-style-type: none"> <li>• New Tapping Fume</li> </ul>	11 December 2014
Giuricich Coastal projects (Pty) Ltd	<ul style="list-style-type: none"> <li>• Mondi Reel</li> </ul>	11 December 2014
Group Five	<ul style="list-style-type: none"> <li>• Senekal to Vaalpenspruit</li> </ul>	17 March 2015
GVK	<ul style="list-style-type: none"> <li>• Cape Gate</li> <li>• Tygervalley Construction</li> <li>• Akila Trading</li> </ul>	3 March 2015
Group Five WBHO Stefanutti Basil Read	<ul style="list-style-type: none"> <li>• World Cup Stadia</li> </ul>	12 November 2014
WBHO	<ul style="list-style-type: none"> <li>• N17 between New Canada and Soccer City (contractual conditions)</li> </ul>	On 25 August 2015, decision to refer was taken and it will be referred.

## **Phase Two Construction Non Referrals**

In the Phase Two Construction Investigation, the Commission did not prosecute (non referred) twenty (20) cases against 14 firms as outlined in table 4 below.

*Table 4*

<b>Firm</b>	<b>Projects</b>	<b>Reason</b>
Basil Read	Tati Nickle DMS Project	Insufficient evidence
WBHO	Milkwood Development Marina Martinique PE	Prescribed
Ludick Construction	Mooi Rivier Mall Potchefstroom	Liquidated
Adamson Nielso	Commercial Building in Mafikeng	Insufficient evidence
Wascon	N1 Parys	Liquidated.
Trencon	New Board Factory at Ugie	Insufficient evidence
Meyker	N1 Parys	Liquidated
Rainbow Construction	Benmore Shopping Centre	Liquidated
Rainbow Construction	New Distribution Depot( BATSA)	Liquidated
Rainbow Construction	Nike House of Football	Liquidated
GD Irons	Villa Mall	Insufficient evidence
Basil Read	Sanral N17 Leandra/Leaven	Insufficient evidence
Raubex	Sanral N17 Leandra/Leaven	Insufficient evidence
Futura	Nike House of Football	Wound up
Granbuild	Bokomo	Insufficient evidence
WBHO	Lebone College	Insufficient evidence
Raubex	Colesburg Springfontein	Insufficient evidence
Group Five	New Sendzimir	Insufficient evidence
Group Five	Tamboti	Insufficient evidence
Basil Read	N17 between New Canada and Soccer City (contractual conditions)	Insufficient evidence
Edilcon	Sunninghill project	Insufficient evidence