COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 017277

In the matter between:

The Competition Commission	Applicant
and	
Murray & Roberts Limited	Respondent

Panel:	N Manoim (Presiding Member), Y Carrim (Tribunal Member) and T Madima (Tribunal Member)
Heard on:	18 July 2013
Decided on:	22 July 2013

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".

Presiding Member
N Manoim

Concurring: Y Carrim and T Madima

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT Case No:
CC Case No:2009Feb4279/2009Sep4641

competitiontribunal south africa
2013 -07- 10
RECEIVED BY: Malomo
TIME: 14h04

Application for confirmation of a consent agreement

In the matter between:

THE COMPETITION COMMISSION **Applicant**

and

MURRAY & ROBERTS LIMITED **Respondent**

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1)(a)(iii) AS READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND MURRAY & ROBERTS LIMITED, IN REGARD TO CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 1998

PREAMBLE

WHEREAS the Competition Commission is empowered to, *inter alia*, investigate alleged contraventions of the Competition Act, 1998;

WHEREAS the Competition Commission is empowered to, *inter alia*, conclude consent agreements in terms of section 49D of the Competition Act, 1998;

WHEREAS the Competition Commission has invited firms in the construction industry to engage in settlement of contraventions of the Competition Act, 1998;

WHEAREAS Murray & Roberts Limited ("Murray & Roberts") has accepted the invitation and has agreed to settle in accordance with the terms of the Invitation;

NOW THEREFORE the Competition Commission and Murray & Roberts hereby agree that application be made to the Competition Tribunal for the confirmation of this consent agreement as an order of the Competition Tribunal in terms of section 49D as read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act, 1998.

1. **Definitions**

For the purposes of this consent agreement, unless the context indicates otherwise, the following definitions shall apply:

1.1 "**Act**" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

1.2 "**CFTP**" means the Construction Fast Track Process announced by the Commission on 1 February 2011 to fast track the settlement process and to resolve the Commission's investigations into the construction industry;

1.3 "**CIDB Regulations**" refers to the Construction Industry Development Regulations, 2004 (as amended) (Government Notice No.692 of 9 June 2004, published in Government Gazette No.26427 of 9 June 2004);

1.4 "**CLP**" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);

1.5 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.6 "**Commissioner**" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.7 "**Complaints**" means the complaints initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case numbers 2009Feb4279 and 2009Sep4641;

1.8 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Murray and Roberts Limited;

1.9 **"Cover Price"** means generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order that the firm that does not wish to win the tender may submit a higher price; or a price that is provided by a firm that does not wish to win a tender to a firm that does wish to win that tender in order that the firm that wishes to win the tender may submit a lower price.

1.10 **"Invitation"** means the Invitation to Firms in the Construction Industry to engage in Settlement of Contraventions of the Competition Act, as published on the website of the Commission on 1 February 2011;

1.11 **"Murray & Roberts"** means a company incorporated under the laws of the Republic of South Africa with its principal place of business at Douglas Roberts Centre, 22 Skeen Boulevard, Bedfordview.

1.12 **"Non-prescribed prohibited practices"** refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that are on-going or had not ceased three years before the complaints were initiated, as contemplated in section 67 of the Act;

1.13 **"Parties"** means the Commission and Murray and Roberts Limited (Murray & Roberts);

1.14 **"Prescribed prohibited practices"** refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that ceased after 30 November 1998, but more than three years before the complaints were initiated;

1.15 **"Respondent"** means Murray & Roberts;

1.16 **"Settlement"** refers to settlement in terms of the Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of

the Act and the procedures detailed therein.

1.17 **"Subsector"** refers to the classes of construction work defined in Schedule 3 of the CIDB Regulations, substituted by Government Notice No. 8986 of 14 November 2008, published in Government Gazette No. 31603 of 14 November 2008;

1.18 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. The Complaints

2.1 On 10 February 2009 the Commission initiated a complaint in terms of section 49B(1) of the Act into alleged prohibited practices relating to collusive conduct in the construction of the stadiums for the 2010 FIFA Soccer World Cup against Grinaker-LTA (the construction operating business unit of Aveng), Group Five Limited, Basil Read (Pty) Ltd, WBHO Construction (Pty) Ltd, Murray & Roberts Limited, Stefanutti Stocks Limited, Interbeton Abu Dhabi nv llc and Bouygues Construction SA.

2.2 In addition, on 01 September 2009, following the receipt of applications for immunity in terms of the CLP, the Commission initiated a Complaint in terms of section 49B(1) of the Act into particular prohibited practices relating to conduct in construction projects, by the firms listed below. The Complaint concerned alleged contraventions of section 4(1)(b) of the Act as regards price fixing, market allocation and collusive tendering. The investigation was initiated against the following firms: Grinaker LTA Ltd, Aveng (Africa) Ltd, Stefanutti Stocks Holdings Ltd, Group Five Ltd, Murray & Roberts, Concor Ltd, G. Liviero & Son Building (Pty) Ltd, Giuricich Coastal Projects (Pty) Ltd, Hochtief Construction AG, Dura Soletanche-Bachy (Pty) Ltd, Nishimatsu Construction Co Ltd, Esorfranki Ltd, VNA Pilings CC, Rodio Geotechnics (Pty) Ltd, Diabor Ltd, Gauteng Piling (Pty) Ltd, Fairbrother Geotechnical CC, Geomechanics CC, Wilson Bayly Holmes-Ovcon Ltd

and other construction firms, including joint ventures.

3. **The Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Act**

3.1 The Commission's investigation of the Complaints, as well as several other of the Commission's investigations in the construction industry, led the Commission to believe that there was widespread collusion in contravention of section 4(1)(b)(iii) of the Act in the construction industry.

3.2 Section 4(1)(b) provides-

"4. Restrictive horizontal practices prohibited

(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –

(a) it has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect; or

(b) it involves any of the following restrictive horizontal practices :

(i) directly or indirectly fixing a purchase or selling price or any other trading condition;

(ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or

(iii) collusive tendering."

3.3 The collusive conduct engaged in, in the context of the Invitation and this Consent Agreement, was collusive tendering or "bid-rigging". Collusive tendering involves particular conduct by firms whereby as competitors they collude regarding a tender resulting in the tender process being distorted. The bid prices and the bid submissions by these competitors as well as the outcome of the tender process is not the result of competition on the merits. "Cover pricing" in this context occurs when conspiring firms agree that one or more of them will submit

a bid that is not intended to win the contract. The agreement is reached in such a way that among the colluding firms, one firm wishes to win the tender and the others agree to submit non-competitive bids with prices that would be higher than the bid of the designated winner, or the price will be too high to be accepted, or the bid contains special terms that are known to be unacceptable to the client. Collusive tendering therefore applies to agreements or concerted practices which have as their object or effect the prevention, lessening, restriction and distortion of competition in South Africa.

3.4 In terms of section 2 of the Act, two of the key objects of the Act are to promote the efficiency, adaptability and development of the economy, and to provide consumers with competitive prices and product choices. Section 217 of the Constitution of the Republic of South Africa, 1996 calls for a procurement or tender system which is fair, equitable, transparent, competitive and cost-effective.

3.5 In addition, the Commission is required in terms of section 21(1) of the Act, *inter alia*, to implement measures to increase market transparency, to investigate and evaluate alleged contraventions of Chapter 2 of the Act, and to negotiate and conclude consent agreements in terms of section 49D for confirmation as an order of the Competition Tribunal in terms of section 58(1)(b) of the Act.

3.6 Therefore, in the interest of transparency, efficiency, disrupting cartels and incentivising competitive behaviour in the construction industry and a cost-effective, comprehensive and speedy resolution of the investigations referred to above, the Commission decided to fast track these investigations and their resolution by inviting firms that were involved in collusive tendering in the form of bid-rigging of projects in the construction industry, to apply to engage in settlement discussions on the terms set out in the Invitation.

3.7 On 1 February 2011 the Commission issued a media release about the Invitation and published same on its website. In the Invitation, the Commission offered firms the opportunity to settle the alleged contraventions of the Act, if they would:

3.7.1 submit an application in terms of PART 2 of the Invitation;

3.7.2 agree to pay an administrative penalty or penalties determined by the Commission as envisaged in paragraph 10.2 read with paragraphs 19-28 of the Invitation; and

3.7.3 comply with the requirements of the settlement process as set out in PART 1 and PART 3 of the Invitation.

3.8 This agreement sets out the detail of the non-prescribed prohibited practices only which the respondent is liable to settle regard being had to section 67(2) of the Act and the penalty is calculated taking into account only the said non- prescribed prohibited practices.

3.9 Applying firms were required to *inter alia* provide the Commission with truthful and timely disclosure of information and documents relating to the prohibited practices and to provide full and expeditious co-operation to the Commission concerning the prohibited practices.

3.10 An applying firm could request the Commission to consider its application in terms of the Invitation as an application for a marker or as an application for immunity under the CLP. Firms could also apply for a marker or for immunity under the CLP before making an application in terms of the Invitation.

3.11 The deadline to apply for a settlement in terms of the Invitation was 12h00 on 15 April 2011.

4. Applications by Murray & Roberts

4.1 Murray & Roberts applied for leniency and Settlement in terms of the Invitation. Murray & Roberts Limited is a building, industrial and civil projects contractor that leverages from its engineering expertise and industrial design competence to deliver major construction projects in South Africa. Murray & Roberts is primarily focused on resources driven

construction markets in industry and mining, oil and gas, as well as power and energy. It offers civil, mechanical, electrical, mining and process engineering, general building and construction operations.

4.2 Murray & Roberts applied on 15 April 2011 to participate in the Construction Fast Track Settlement Process. Murray & Roberts disclosed a total of Twenty One (21) prohibited practices (19 projects and 2 meetings). Out of the twenty-one (21) prohibited practices, five (5) are prescribed prohibited practices and the balance of sixteen prohibited practices (14 projects and two (2) meetings) are not prescribed. Of these 16 non-prescribed prohibited practices, 4 projects are the subject of investigations completed by the Commission prior to the Invitation and therefore fall outside the scope of the CFTP. This leaves 12 prohibited practices (10 projects and 2 meetings).

4.3 Out of the 12 non-prescribed prohibited practices, Murray & Roberts was first to apply for 5 non-prescribed prohibited practices (4 projects and 1 meeting). Murray & Roberts is not first to apply for 7 non-prescribed prohibited practices (6 projects and 1 meeting).

4.4 Murray & Roberts is further implicated in 11 non prescribed prohibited practices (10 projects and 1 meeting) which it did not disclose Murray & Roberts has agreed to settle 10 of these.

4.5 The total number of prohibited practices being settled under the Consent Agreement is seventeen (17) non-prescribed prohibited practices. Eleven (11) prohibited practices are in the Civil Engineering sub-sector, 2 prohibited practices are in the General Building sub-sector, and 4 prohibited practices are in the Mechanical Engineering sub-sector.

4.6 The 17 prohibited practices or contraventions by Murray & Roberts of section 4(1)(b)(iii) of the Act which are the subject of this Consent Agreement, are set out below.

5. Disclosed Meeting and Projects

5.1. 2006 Road Contractors' Meetings

Murray & Roberts through its subsidiary, Concor Limited (Concor), reached agreement with Aveng, Raubex, WBHO, Haw & Inglis and Basil Read on or about 2006, in that they were attendees at the 2006 Road Contractors Meeting where they agreed to allocate tenders for the construction of roads. There was also an agreement in terms of which firms who were not interested in the projects or in winning the tenders, or were not allocated a project, would submit cover bids to ensure that those that were interested in winning particular bids, won them. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

5.2 Gauteng Freeway Improvement Project ("GFIP") - Package A [TENDER NO: NRA N1 001200-2008/1], Package B [TENDER NO:NRA N1 001-200-2008/2], Package E [TENDER NO: NRA N1 003-120-2008/1

Concor in joint venture with Stefanutti reached agreement with WBHO on or about 2006 in respect of the Gauteng Freeway Improvement project ("GFIP") which comprised of three packages, namely; Package A, B and E. In terms of the agreement Concor, Stefanutti and WBHO agreed to allocate the various packages among themselves. They further agreed to exchange cover prices to give effect to the allocation arrangements. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The project was for the addition of lanes, construction of retaining walls, bridges and structure as well as various intersections on the southern sections of freeways around Johannesburg. The client for the project was SANRAL. The tender for Package A was awarded to Group Five, Package B was awarded to WBHO, and Package E was awarded to Group Five. The projects for Package A, B and E were completed in 2010.

5.3 **Komati Chimney Project (Tender Ref No: 4600007468)**

Concor reached agreement with Grinaker LTA on or about November 2006 in that they agreed on a cover price in respect of this project. In terms of the agreement Grinaker LTA gave Concor a cover price so that Concor could submit a non-competitive bid to enable Grinaker LTA to win the tender. Grinaker was awarded the tender in line with the collusive arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The project was for the design and construction of a single chimney with two steel flues, for Eskom Holdings Limited. The project was completed on 30 November 2006.

5.4 **National Route 5, Section 4 between Senekal and Vaalpenspruit Contract (Tender Ref No: NRA 005 040 2008/1)**

Concor reached agreement with Group Five on or about December 2006 in that they agreed on a cover price in respect of this project. In terms of the agreement, Concor gave a cover price to Group Five so that Group Five could price lower than the cover price and enable it to win the tender. Group Five was awarded the tender in line with the cover price agreement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the rehabilitation of the National Route 5, Section 4 between Senekal and Vaalpenspruit, for SANRAL.

5.5 **PPC Dwaalboom Pre-Heater Towers (Tender Ref No: DB05)**

Concor reached agreement with Stefanutti, Grinaker LTA and Group Five on or about July 2006 in that they agreed on a cover price in respect of this project. In terms of the agreement Concor provided a cover price to Stefanutti, Grinaker LTA and Group Five so that Stefanutti, Grinaker LTA and Group Five could price higher than Concor to enable Concor to win the tender. Concor was awarded the tender in

line with the cover price agreement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of a pre-heater tower at Dwaalboom for Pretoria Portland Cement. The project was completed on 7 January 2008.

5.6 **PPC Dwaalboom Raw Coal Mill (Tender Ref No: DB09)**

Concor in joint venture with Stefanutti ("Concor-Stefanutti JV") reached agreement with WBHO and Grinaker LTA, on or about September 2006 in that they agreed on a cover price in relation to this project. In terms of the cover price agreement Concor-Stefanutti JV provided WBHO and Grinaker LTA with a cover price so that WBHO and Grinaker LTA could price higher than Concor-Stefanutti JV to ensure that the Concor-Stefanutti JV won the tender. In line with the cover price agreement, the Concor-Stefanutti JV was awarded the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the civil works for the Dwaalboom expansion for Pretoria Portland Cement Company (Pty) Ltd. The project was completed in August 2009.

5.7 **The New Board Factory at Ugie PG Bison (Tender Ref No: E05-586)**

Concor in joint venture with Grinaker-LTA and Trencon Construction ("the Joint Venture") reached agreement with WBHO on or about April 2006, in that Grinaker-LTA, on behalf of the Joint Venture, requested WBHO to refrain from submitting a tender to allow the Joint Venture to win the tender. In accordance with the collusive agreement the tender was awarded to the Joint Venture. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of a new plant for the production of particle boards in Ugie, for P G Bison Limited. The project was completed on 30 September 2009.

6. Non-disclosed Meetings and Projects

6.1. Wade List Meeting

This meeting took place in 2007 between representatives of Wade Walker (Pty) Ltd ("Wade Walker"), a subsidiary of Murray & Roberts, and Group Five Energy (Pty) Ltd ("Group Five Energy"), a subsidiary of Group Five. At this meeting, an agreement was reached between representatives of Wade Walker and Group Five Energy that certain upcoming tenders for electrical and instrumentation services would be allocated among them. They circulated a list of 43 upcoming projects and each identified the projects in the list that they were interested in winning. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

6.2. BKM Processing Plant Project (Tender Ref No: ASS/BKM/06/0023)

Concor reached agreement with Grinaker-LTA on or about March 2006, in that they agreed to allocate the BKM Processing Plant Project to Grinaker-LTA. Grinaker LTA and Concor further agreed on a mark-up of 12.5% in relation to their bid prices for this project. To give effect to the allocation agreement they also exchanged cover prices to ensure that the intended winner wins the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The BKM Processing Plant Project involved the construction of a processing plant and product load-out facility. The Client for the project was Assmang Iron Ore. The tender was awarded to Concor. The project was completed on 27 April 2007.

6.3. BKM Export Rail Line Project (Tender Ref No: ASS/BKM/060025)

Concor reached agreement with Grinaker-LTA on or about March 2006, in that they agreed to allocate the BKM Export Rail Line Project to Concor. Grinaker LTA and Concor further agreed on a mark-up of 12.5% in relation to their bid prices for this project. To give effect to the

allocation agreement they also exchanged cover prices to ensure that the intended winner wins the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The BKM Export Rail Line Project was for the construction of a rail line at Sishen mine, in the Northern Cape. The Client for the project was Assmang Iron Ore. The tender was awarded to Concor. The project was completed on 24 February 2007.

6.4. **Hartebeesfontein Water Works Project (Tender Ref No: TE04/38)**

Murray & Roberts and Concor reached agreement with Grinaker-LTA and Civilcon (Pty) Ltd ("Civilcon") on or about May 2004 in that they agreed on a losers' fee in respect of this project in terms of which Grinaker-LTA agreed to pay Murray & Roberts, Concor and Civilcon a losers fee in the amount of R500 000 each. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project involved the construction of a concrete wall on the Hartebeesfontein Water Care Centre for the East Rand Water Care company. Grinaker-LTA was awarded this tender and the project was completed on 28 September 2007.

6.5. **Kayelekera Uranium Contract**

Wade Walker reached agreement with Group Five Energy in respect of this project on or about 2007, in that they agreed to allocate this project to Group Five Energy. To give effect to this agreement Wade Walker submitted a higher price for this project to ensure that Group Five Energy won the project. The tender was awarded to Group Five Energy in line with the collusive agreement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the electrification of the uranium processing plant at Keyalekera mine in Malawi. The project was completed in January 2010.

6.6. **Perkoa Zinc Plant for AIM Resources**

Wade Walker reached agreement with Group Five Energy on or about 2007, in that they agreed to allocate this project to Wade Walker. To give effect to the allocation agreement Group Five Energy submitted a higher price for this project to ensure that Wade Walker won the project. The tender was awarded to Wade Walker in line with the collusive agreement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The project involved the electrification of the Zinc Processing Plant at Perkoa mine in Burkina Faso for AIM Resources. The project was cancelled by the client shortly after it commenced on or about August 2007.

6.7. **N1 North N1 South and N17 Maintenance Contract**

Murray & Roberts, reached agreement with Group Five, Basil Read and Concor (prior to the merger between Concor and Murray & Roberts in 2006) in respect of this two-part project on or about 2001, in that they agreed on a losers' fee arrangement. In terms of the agreement Group Five agreed to pay Murray & Roberts and Concor a losers' fee in exchange for being allocated the N1 North and N1 South maintenance contract . The parties to this arrangement further agreed that Basil Read should win the N17 portion of the project, and would therefore not be paid a loser's fee. In line with the collusive arrangement, Group Five paid Murray & Roberts and Concor a loser's fee after winning the N1 North, N1 South Maintenance contract, while Basil Read won the N17 Maintenance contract. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The project involved the tolling and maintenance of the N1 North, N1 South, and N17, which started on or about 2002. The client for the project was SANRAL, and the project was planned to be a 10 year project. The project is still on-going.

6.8. **Berg River Dam (Tender Ref No: TCTA-B2020)**

Concor whilst in joint venture with Hotchief (Concor-Hotchief Joint Venture) reached agreement with Grinaker LTA, Group Five, WBHO, and Western Cape Empowerment Joint Venture (The BRP Joint Venture), as well the Basil Read, Ceccon, Olderbrecht Joint Venture, on or about 2004, in that they agreed on a losers' fee in respect of this project. Concor-Hotchief Joint Venture also agreed on a loser's fee with the BRP Joint Venture, and the Basil Read, Ceccon, Olderbrecht Joint Venture. In terms of the arrangement they agreed that the BRP JV would win the tender and then pay a losers' fee to Concor-Hotchief Joint Venture and the Basil Read, Ceccon, Olderbrecht Joint Venture. In line with the collusive agreement, the tender was awarded to the BRP Joint Venture. This is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of a dam at the Berg River for Trans Chaledon Channel Authority. The project was completed on 19 September 2009.

6.9. **Peter Mokaba Sports Stadium, Polokoane**

Concor reached agreement with G Liviero on or about 2006, in that they agreed on a cover price in respect of this project. In terms of the agreement Concor provided a cover price to G Liviero so that G Liviero could submit a non-competitive bid to ensure that Concor wins the tender. In line with the collusive agreement Concor submitted the lowest price but the client awarded the tender to WBHO. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of a new sports stadium and complex in Polokoane for the Polokoane Municipality. The tender was awarded to WBHO.

6.10 **Gautrain Project**

Wade Walker reached agreement with Group Five Energy in that they agreed to share the budget prices for the three stations, namely; Pretoria, Midrand and OR Tambo Airport. In terms of the agreement Group Five Energy provided the budget price to Wade Walker after Group Five Energy had submitted its budget price to the client, Bombela, but before the tender was submitted. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project involved the electrification of Gautrain stations for the Bombela Concession. The tenders were awarded to Wade Walker. The project is still on-going.

7 Admission

Murray & Roberts admits that Concor, Wade Walker and Murray & Roberts entered into the agreements described in paragraphs 5 and 6 above with their competitors, in contravention of section 4(1)(b) (iii) of the Act.

8 Co-operation

In so far as the Commission is aware and in compliance with the requirements as set out in the Invitation, Murray & Roberts:

8.1 has provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the prohibited practices;

8.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices;

8.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in the future engage in, any form of prohibited practice;

8.4 has confirmed that it has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practices;

8.5 has confirmed that it has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

9 Agreement Concerning Future Conduct

9.1 In compliance with the requirements as set out in the Invitation, Murray & Roberts agrees and undertakes to provide the Commission with full and expeditious co-operation from the time that this Consent Agreement is concluded until the subsequent proceedings in the Competition Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:

9.1.1 to the extent that it is in existence and has not yet been provided, providing (further) evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions contained in this Consent Agreement;

9.1.2 Murray & Roberts will avail its employees and former employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement;

9.1.3 Murray & Roberts shall develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act.

9.2 Murray & Roberts shall develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and

agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act.

9.3 Murray & Roberts shall submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal.

9.4 Murray & Roberts shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Murray & Roberts within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.

9.5 Murray & Roberts will not in the future engage in any form of prohibited conduct and will not engage in collusive tendering which will distort the outcome of tender processes but undertakes henceforth to engage in competitive bidding.

10 Administrative Penalty

10.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, and as envisaged in paragraph 10.2 read with paragraphs 19-28 of the Invitation, Murray & Roberts accepts that it is liable to pay an administrative penalty ("penalty").

10.2 According to the Invitation, the level of the penalty is to be set on the basis of a percentage of the annual turnover of Murray & Roberts in the relevant subsector in the Republic and its exports from the Republic for the financial year preceding the date of the Invitation.

10.3 The meetings and projects which Murray & Roberts has been found to have contravened the Act, fall under the Civil Engineering, General Building, and Mechanical Engineering CIDB sub-sectors.

10.4 Accordingly, Murray & Roberts is liable for and has agreed to pay an

administrative penalty in the sum of R309 046 455 (Three Hundred and Nine Million and Forty Six Thousand, Four Hundred and Fifty Five Rand) which penalty is calculated in accordance with the Invitation.

11 Terms of payment

11.1 Murray & Roberts will pay the amount set out above in paragraph 10.4to the Commission in three payments, the first payment of R 103 015 485 within 30 days from the date of confirmation of this Consent agreement by the Tribunal. A second payment of R 103 015 485 exactly one year from the first payment and a third payment of R 103 015 485 exactly one year from the second payment.

11.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4050778576
Account type:	Current Account
Brach Code:	323 345

11.3 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

12 Full and Final Settlement

This agreement is entered into in full and final settlement of the specific conduct listed in paragraphs 5 and 6 of this Consent Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission

and Murray & Roberts in respect of this conduct only.

Dated and signed at PRETORIA **on the** 9TH **day of** JULY **2013.**

FOR Murray & Roberts

H.J. LAAS CEO MURRAY & ROBERTS

[FILL IN NAME AND POSITION OF PERSON THAT IS SIGNING]

Dated and signed at Pretoria **on the** 10 **day of** July **2013.**

For the Commission

Shan Ramburuth

Commissioner