

PRESENTATION TO THE PORTFOLIO COMMITTEE

ON PUBLIC WORKS

CONSTRUCTION SECTOR COLLUSION

15 March 2016

Makgale Mohlala, Manager: Cartels Division

Competition Commission South Africa



competition commission
south africa

competition regulation for a growing and inclusive economy

Outline

- Background
- The Fast Track Settlement Process
- Value of Projects Rigged
- Penalty Calculations
- Conclusion

Background

- 2009: CCSA initiated investigations into construction sector
- CCSA concluded bid rigging was widespread; noted UK and Holland had similar challenges and developed a fast track settlement system
- Received CLP applications pointing to entrenched collusion
- 2011: Launched Fast Track Settlement Process inviting construction firms to voluntarily disclose rigged projects

Background(cont.)

Objectives of Fast Track Settlement Process:

- Incentivize firms to admit their collusive conduct
- Encourage truthful and comprehensive disclosure
- Strengthen evidence against firms not settling
- Minimise legal costs for prosecution
- Speedy resolution of cases
- Set the construction industry on a new trajectory

The Fast Tracking Settlement Process

Phase 1

- 21 firms responded and disclosed more than 300 projects -
160 prescribed and 140 non prescribed
- 15 of 21 firms concluded settlement agreements with CCSA
- Projects included major infrastructure development in SA e.g.
2010 FIFA Soccer World Cup Stadia, national roads

The Fast Tracking Settlement Process (cont.)

Phase 2

- Focused on firms that did not participate in phase 1
- Outcome of phase 2 investigations
 - 7 firms settled 7 projects
 - 11 firms (19 projects) referred to the Competition Tribunal for prosecution
 - 14 firms (20 projects) not prosecuted

Value of projects rigged

- Tenders rigged worth circa R47 billion
- Public sector projects worth circa R27 billion
- The private sector projects worth circa R18 billion

Penalty Calculations

- Penalty calculated on the basis of number of projects settled per subsector
- The turnover utilized was for a firm in the relevant subsector in 2011
- Considered mitigating and aggravating factors to determine an appropriate penalty

Penalty calculations (cont.)

Category	Number of non-prescribed contraventions by applicant in a sub-sector	Penalty - % of turnover of applicant in the sub-sector
A	1 to 4	1% to 4%
B	5 to 12	4% to 7%
C	13 to 22	7% to 10%
D	23 and over	10% to 12%

Outcome

- Efficient resolution of the bulk of the investigations
- Construction firms collectively paid over R 1 541 397 199 (billion) in fines
- The Competition Tribunal issued over 250 section 65 certificates for civil damages
 - 179 to the public sector
 - 82 to the private sector
- Few resources allocated to deal with the complexity of the investigation, with limited outsourcing

Conclusion

- Fast Track Settlement approach effective method of resolving cartel cases
- All investigations in the construction sector have been concluded due to the Fast Track Settlement Process
- Approach exposed entrenched practice of collusion in the construction sector
- Lessons from other competition authorities on the process
- Focus is now on prosecuting firms that did not settle

Thank you!

Tel: +27 (0)12 394 3200

Fax: +27 (0)12 394 0166

Email: CCSA@compcom.co.za