

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 017038

In the matter between:

The Competition Commission

Applicant

and

Stefanutti Stocks Holdings Ltd

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

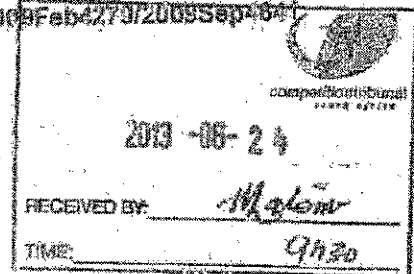
"A"

THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT Case No:

CC Case No: 2009Feb4273/2009Sep4541

Application for confirmation of a consent agreement



In the matter between:

THE COMPETITION COMMISSION

Applicant

and

STEFANUTTI STOCKS HOLDINGS LIMITED

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 50(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 STEFANUTTI STOCKS HOLDINGS 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;

WHEREAS Stefanutti Stocks Holdings Limited ("Stefanutti") has accepted the invitation and has agreed to settle in accordance with the terms of the invitation;

NOW THEREFORE the Competition Commission and Stefanutti 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 sections 58(1)(a)(iii) and 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 diti 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 Stefanutti Stocks Holdings Limited ("Stefanutti");

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 "Parties" means the Commission and Stefanutti;


1.12 "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;

1.13 "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;

1.14 "Respondent" means Stefanutti;

1.15 "Stefanutti" means Stefanutti Stocks Holdings Limited; a company incorporated under the laws of the Republic of South Africa with its principal place of business at Protec Park, corner Zuurfontein Avenue and Oranjerivier Drive, Chloorkop Kampton Park, East Rand.

1.16 "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

A handwritten signature in black ink, consisting of stylized initials 'MR' followed by a flourish.

November 2008;

1.17 "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 Averig), Group Five Limited, Basil Read (Pty) Ltd, WBHO Construction (Pty) Ltd, Murray & Roberts Limited, Stefanutti Stocks Holdings 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, Averig (Africa) Ltd, Stefanutti Stocks Holdings Limited, 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 Piling 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

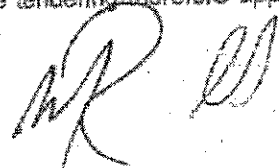
(b) it involves any of the following restrictive horizontal practices:

(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.

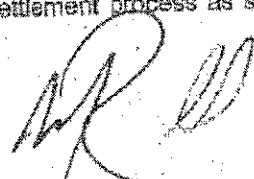
3.6 Therefore, in the interest of transparency, efficiency, disrupting cartels and incentivising competitive behaviour in the construction industry and a cost-effective, comprehensive and speedy resolution of the investigations referred to above, the Commission decided to fast track these investigations 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, hereto attached and marked as Annexure A, 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 the provisions of 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 Stefanutti

- 4.1 Stefanutti applied for leniency and Settlement in terms of the Invitation. Stefanutti is involved in engineering and construction activities throughout the building environment. Its offerings extend across a wide scope of supply including construction of fixed infrastructure, municipal services, mining & industrial facilities and all structures and buildings.
- 4.2 Stefanutti applied for leniency and Settlement on 15 April 2011 and disclosed 39 prohibited practices. Out of the 39 prohibited practices disclosed, 24 are prescribed prohibited practices and 15 are non-prescribed.
- 4.3 Stefanutti was first to apply for 3 out of the 15 non-prescribed prohibited practices and is not first to apply for 12 non-prescribed prohibited practices.
- 4.4 Stefanutti is implicated in 9 non-prescribed prohibited practices which it did not



disclose, and has agreed to settle these 9 non-prescribed prohibited practices.

4.5 The total number of prohibited practices being settled under the Consent Agreement is twenty one (21) non-prescribed prohibited practices. Fourteen (14) prohibited practices are in the Civil Engineering sub-sector, and seven (7) prohibited practices are in the General Building sub-sector.

4.6 The twenty one (21) prohibited practices or contraventions by Stefanutti of section 4(1)(b)(iii) of the Act which are the subject of this Consent Agreement, are set out below.

5. Disclosed Projects

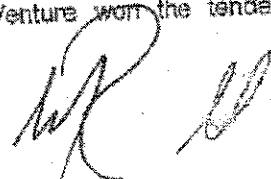
5.1 UCT Women's Residence in Cape Town

Stefanutti reached agreement with Grinaker-LTA and Group Five on or about November 2005, in that they agreed on a cover price and a loser's fee in relation to this project, which was allocated pursuant to the Cape Club Meeting. In terms of the cover price and the losers' fee agreement, Grinaker-LTA and Stefanutti would submit cover prices to ensure that Group Five would win the tender. Further, they agreed that Group Five would pay Stefanutti and Grinaker-LTA a loser's 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 was for building works and residential development at the University of Cape Town's women's residence. The client was the University of Cape Town. The project was awarded to Group Five. The project was completed in 2007.

5.2 Bayhead Road Extension Khangala Bridge Project (Tender Ref No: IR-1010)

Stefanutti in joint venture with Basil Read ("Stefanutti-Basil Read Joint Venture") reached agreement with Group Five, on or about September 2006, in that they agreed on a cover price in respect of this project. In terms of the agreement, Group Five would provide a cover price to Stefanutti-Basil Read Joint Venture to ensure that the Stefanutti-Basil Read Joint Venture won the tender. The



Stefanutti-Basil Read Joint Venture further agreed with Group Five to share profits in respect to this project. In order to implement the profit sharing agreement, the Stefanutti-Basil Read Joint Venture subcontracted a portion of the project to Group Five. The Stefanutti-Basil Read Joint Venture was awarded the tender, with Group Five joining in as a subcontractor. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of Khangela Bridge and extension of Bayhead road in Durban for the Ethekweni Municipality. The project was completed in January 2010.


5.3 Civil Works for Tati Activox Project (Tender Ref No: M32/250-CC002/04)

Stefanutti in a joint venture with Grinaker LTA (Stefanutti-Grinaker Joint Venture) reached agreement with Basil Read and Murray & Roberts on or about June 2007, in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti-Grinaker Joint Venture gave a cover price to Basil Read and Murray & Roberts so that Basil Read and Murray & Roberts could submit a non-competitive bid to ensure that the Stefanutti-Grinaker Joint Venture won the tender. The Stefanutti-Grinaker Joint Venture was awarded the tender 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 civil works at Tati Activox near Francistown in Botswana for Botswana Metal Refinery (Pty) Ltd. The project was completed on 31 September 2008.

5.4 Coal Mill Line 2 -- Dwaalboom (Tender Ref No: DE/00)

Stefanutti in joint venture with Concor (Stefanutti-Concor Joint Venture) reached agreement with WBHO and Grinaker LTA, on or about September 2006, in that they agreed on a cover price in respect of this project. In terms of the agreement Stefanutti-Concor Joint Venture gave a cover price to WBHO and Grinaker LTA so that WBHO and Grinaker LTA could submit non-competitive bids to ensure that the Stefanutti-Concor Joint Venture won the tender. In line with the cover price agreement, the Stefanutti-Concor Joint Venture 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 closing date for the tender was 31 July 2008.

5.5 *Construction of Green Point Stadium (Tender Ref No: Q00/53)*

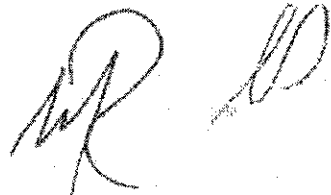
Stefanutti reached agreement with WBHO on or about December 2006, in that they agreed on a cover price in respect of this project. In terms of the agreement WBHO provided a cover price to Stefanutti so that Stefanutti could submit a non-competitive bid to ensure that WBHO won the tender. WBHO was in joint venture with Murray & Roberts when bidding for the tender, and won the tender in line with the collusive arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of Green Point Stadium in Cape Town, for the City of Cape Town. The project was completed on 10 November 2009.

5.6 *FNB Soccer City Stadium*

Stefanutti reached agreement with Grinaker LTA in that they agreed on a cover price in respect of this project. In terms of the agreement Grinaker LTA would provide a cover price to Stefanutti to ensure that Grinaker LTA won the tender. The tender was awarded to Grinaker LTA in line with the cover price arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project involved the provision of general building and related works at Soccer City Stadium for the City of Johannesburg. The project was completed on 30 April 2009.

Two handwritten signatures in black ink, one appearing to be 'MR' and the other a stylized 'S' or 'D'.

5.7 Mondi Multi Fuel Boiler (Tender Ref No: M679736001)

Stefanutti reached agreement with JT Ross, on or about October 2006, in that they agreed to add a losers' fee in respect of this project. In terms of the agreement the firm which won the bid was to pay R49 950 to the losing firm. Stefanutti was awarded this tender and, in line with the agreement, paid the agreed fee of R49 950 to JT Ross on or about May 2007. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project involved the civil works which included foundations, channels, and minor buildings for a boiler at Mondi Paper South Africa (Pty) Ltd situated at Merebank, Durban. The project was completed on 30 November 2006.

5.8 PP Rust North Phase 1 Civils

Stefanutti reached agreement with Grinaker LTA, Concor, Murray & Roberts, WBHO and Group Five on or about June 2007, in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti provided a cover price to Grinaker, Concor, Murray & Roberts, WBHO and Group Five to ensure that WBHO won the tender. The tender was awarded to WBHO 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 construction of a concrete infrastructure to platinum mine for Anglo Platinum Limited.

5.9 Civil Works for the Text Nickel Dense Medium Separation ("DMS") Project (Tender Ref No: C2585/7/010)

Stefanutti in joint venture with Grinaker LTA (Stefanutti-Grinaker Joint Venture) reached agreement with Murray & Roberts and Basil Read, on or about February 2007, in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti/Grinaker Joint Venture gave a cover price to Murray & Roberts and Basil Read so that Murray & Roberts could win the tender. The tender was awarded to Murray & Roberts 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 DMS civil works at Tati near Francistown in Botswana for Tati Mining Company. The project was completed in December 2008.

5.10 Z-Mill Civils and Structural Works (Tender Ref No: 070316/CEP3244)

Stefanutti reached agreement with Group Five and WBHO, on or about July 2007, in that they agreed on a cover price in respect of this project. In terms of the agreement Stefanutti provided a cover price to Group Five and WBHO to ensure that Stefanutti won the tender. The project was awarded to Stefanutti in line with the collusive arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project involved civil and structural steel works for the Sendzimir Cold Rolling Mill for Columbus Stainless Steel. The project was completed on 31 October 2008.


5.11 PPC - Dwaalboom DB-05 Preheater Towers (Tender Ref No: 060650)

Stefanutti reached agreement with Concor 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 so that the latter would submit a non-competitive bid to ensure that Concor won 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 Preforia Portland Cement. The project was completed on 7 January 2008.

5.12 Durban International Convention Centre (Tender Ref No: CSA 09361)

Stefanutti in joint venture with Fikile Construction (Pty) Ltd (Stocks Fikile C&R JV) reached agreement with Grinaker LTA, WBHO and Group Five on or about October 2004 in respect of the Durban International Convention Centre (Durban



ICC) project. Group Five and WBHO were in a joint venture known as Masinya JV and Grinaker LTA and Sivukile Contractors (Pty) Ltd were in a joint venture known as Wozani JV. In terms of the agreement Grinaker-LTA provided a cover price to Stefanutti, WBHO and Group Five to ensure that the joint venture involving Grinaker-LTA won the tender. Stefanutti, WBHO, Group Five and Grinaker-LTA also agreed on a loser's fee arrangement in terms of which they agreed that a tender fee of R750 000 would be included in the tender price so that the winner of the tender would pay the losing bidders. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The project was for the construction of the Durban International Convention Centre for the City of Durban. The tender was awarded to Masinya JV. The project was completed in July 2008.

6 Non Disclosed Projects and Meeting

6.1 *The Ngezi Phase 1 Civil Work*

Stefanutti reached agreement with Concor on or about January 2007 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 in order for Stefanutti to win the tender. In line with the cover price arrangement, Stefanutti was awarded the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project involved the construction of concrete infrastructure for a platinum concentrating facility in Zimbabwe for Zimplats, a member of the Impala group of companies in Zimbabwe. The project was scheduled to be completed in June 2009.

6.2 *Sappi Amathuku, Expansion of Sappi Plant*

Stefanutti in joint venture with Group Five, reached agreement with Grinaker LTA on or about 2006 in that they agreed on a cover price in respect of this project. In terms of the agreement Grinaker LTA provided a cover price to Stefanutti to



ensure that Stefanutti-Group Five joint venture would win the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the extension of the Sappi Plant in Umkomaas, Kwazulu Natal, for Sappi Saicor. The project was completed in April 2008.

6.3 *New Distribution Depot-BATSIA (Tender Ref No: MFC082)*

Stefanutti reached agreement with Giuricich, Edilcon, G D Irons and Rainbow Construction in that they agreed on a cover price in respect of this project. In terms of the agreement Giuricich provided a cover price to Stefanutti, Edilcon, G D Irons and Rainbow Construction to ensure that Giuricich won the tender. In addition, Giuricich agreed to pay Stefanutti a losers' fee in the amount of R219 166.66 in the event that Giuricich won the tender. In line with the cover price arrangement, the tender was awarded to Giuricich. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

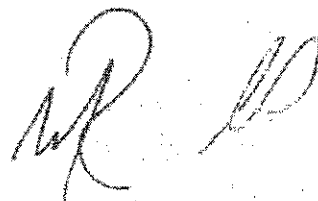
This project was for the construction of a new distribution depot for British American Tobacco. The project was completed on 9 September 2006.

6.4 *New Tuks Residence*

Stefanutti reached agreement with Giuricich on or about 2006 in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti provided a cover price to Giuricich to ensure that Stefanutti would win the tender. Stefanutti was awarded the tender in line with the collusive agreement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The project was for the construction of new residence village for the University of Pretoria. The project was completed on or about March 2008.

6.5 *Gauteng Freeway Improvement Project ("GFIP") - Package A [Tender Ref No: NRA N1 001200-2008/1], Package B [Tender Ref No: NRA N1 001-200-2008/2], Package E [Tender Ref No: NRA N1 003-120-2008/1]*



Stefanutti in joint venture with Concor 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 Stefanutti, Concor 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.

6.7 Anglo-Platinum Housing (Thabazimbi and Burgersfort)

(Tender Ref No: H07/0040/00 & T08/0026)

Housing Africa Development (Pty) Ltd ("Housing Africa"), a subsidiary of Stefanutti reached agreement with Group Five on or about 2007 in that they agreed on a cover price in respect of this project which had two packages, namely; the Thabazimbi Package and the Burgersfort Package. In terms of the agreement, Housing Africa provided a cover price to Group Five in respect to the Thabazimbi Package. The agreement also involved Stefanutti and Group Five agreeing on an allocation arrangement in terms of which Stefanutti would submit a non-competitive bid in respect of the Thabazimbi Package to enable Group Five to win the tender, and that Stefanutti would win the Burgersfort Package. Housing Africa also provided a cover price to Group Five in respect to the Burgersfort Package, and they also agreed on an allocation arrangement in terms of which Group Five would submit a non-competitive bid in respect of the Burgersfort Package to enable Stefanutti to win the tender, and that Group Five would win the Thabazimbi project. In line with the collusive agreement, Group Five was awarded the tender for the Thabazimbi Package, and Stefanutti was awarded the tender for the Burgersfort Package. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

This project was for the construction of housing units for Anglo Platinum mine.

6.8 Nicci Apartments (Tender Ref No: BJ1139)

Stefanutti reached agreement with Vlaming, G Liviero, Guiricich and Bartlett Construction on or about 2008 in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti, G Liviero, Guiricich and Bartlett Construction received a cover price from Vlaming to ensure that they would submit non-competitive bids so that Vlaming would win the Project. Vlaming was awarded the tender 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 construction of a high rise building comprising of 80 residential apartments for Precoated Metals (Pty) Ltd. The project was completed on 03 October 2008.

6.9 Olifantspoort Water Reticulation Works Contract

(Tender Ref No: Q171-07)

Stefanutti reached agreement with Group Five on or about 2008 in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti received a cover price from Group Five to ensure that Stefanutti would submit a non-competitive bid to enable Group Five to win the Project. Group Five was awarded the tender 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 the installation and commissioning of raw water rising main, sedimentation units, gravity filter units, contact tank and plant for chlorine production. The contract for this project also included the construction of various buildings and lagoon as well as various pipe and valve work at Olifantspoort water purification works and associated engineer pump stations. The client for the project was Lapelele Northern Water. The project was completed on October 2009.

6.10 Goedgevonden Crushing Project

(Tender Ref No: 6447-RLS-0GE100-C108)

Stefanutti reached agreement with Grinaker LTA on or about 2007 in that they agreed on a cover price in respect of this project. In terms of the agreement, Stefanutti provided a cover price to Grinaker LTA to ensure that Grinaker LTA would submit a non-competitive bid to enable Grinaker LTA to win the tender, since Stefanutti did not want to win it. The agreement was also that Grinaker would add a margin in the amount of R1 million to its tender price, so that it would later pay Stefanutti a compensation fee in that amount.

This project was for the development of land for a crushing quarry for a rail loop for Xstrata. Xstrata however decided not to continue with this project, as a result, the payment to Stefanutti was not made.

7. Admission

Stefanutti admits that it entered into the agreements detailed in paragraphs 5 and 6 above with its 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, Stefanutti:

- 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, Stefanutti 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 Stefanutti 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;

9.2 Stefanutti shall submit a copy of the competition law compliance programme it has developed to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal. Stefanutti confirms that its compliance agreement incorporates corporate governance to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. Stefanutti also confirms that its compliance programme includes mechanisms for the monitoring and detection of any contravention of the Act.



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

9.4 Stefanutti 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, Stefanutti 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 Stefanutti 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 projects which Stefanutti has been found to have contravened the Act, fall under the Civil Engineering and General Building CIDB sub-sectors.

10.4 Accordingly, Stefanutti is liable for and has agreed to pay an administrative penalty in the sum of R 306 892 664 which penalty is calculated in accordance with the Invitation. In addition, Stefanutti will pay an interest of 10% per annum on the fourth payment as reflected in the payment terms.

11. Terms of payment

11.1 Stefanutti will pay the amount and interest set out above [in paragraph 10.4] to the Commission in four payments over three years, the first such payment of R 68 954 000 within 30 days from the date of confirmation of this Consent Agreement as an order of the Tribunal.



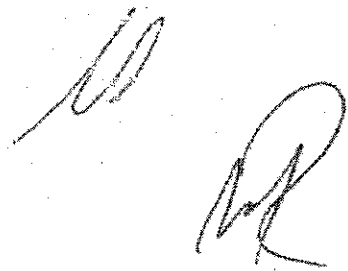
11.2 Stefanutti will make the second payment of R 68 964 000, exactly one year from the date of the previous payment and the third payment of R 68 964 664 exactly one year from the date of the second payment.

11.3 Stefanutti will make the fourth payment of R 100 000 000 plus 10% per annum interest on the latter amount, which is a total of R 110 000 000, exactly one year after the third payment.

11.4 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
Branch Code: 323 345

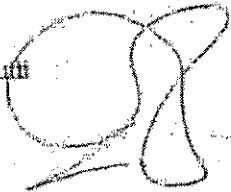
11.5 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.



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 Stefanutti in respect of this conduct only.

Dated and signed at Kempton Park on the 21st day of June 2013.

For Stefanutti 

W. METBURGH CEO

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

Dated and signed at Pretoria on the 21 day of June 2013.

For the Commission 

Shan Rambuath
Commissioner