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Mergers of Raubex, Stefanutti Stocks and WBHO Construction with black owned companies conditionally approved

The Competition Tribunal has conditionally approved three separate mergers involving Raubex, Stefanutti Stocks and WBHO Construction (the acquiring firms) with their respective small and medium sized black owned companies known as the Emerging Contractors (the target firms). The mergers are the result of a Settlement Agreement concluded between the construction companies and the South African government.

The Settlement Agreement followed the Commission's investigation into cartel conduct in the construction industry between 2009 and 2013. The merged entities will be referred to as the Raubex Alliance, the Stefanutti Stocks Alliance and the WBHO Construction Alliance respectively.

These three companies, in terms of the Settlement Agreement, elected to enter into alliances with Emerging Contractors with more than 51% black ownership. They thereby agreed to participate in transformative initiatives aimed at improving competitiveness, innovation and entrepreneurial opportunities in the construction industry. The settlement agreement also provides for the establishment of a trust fund which aims, among others, to develop and enhance transformation in the construction industry.

The Settlement Agreement makes provision for the Tirisano Construction Fund. The fund together with Presidential Infrastructure Coordinating Commission and the Construction Industry Development Board will be responsible for monitoring the compliance of the three companies.

The conditions attached to the approval of the merger are aimed at preventing the exchange of competitively sensitive information through the trust fund that forms part of the settlement and to ensure that post-termination of the alliances, future collusive conduct between the individual construction companies and the Emerging Contractors shall not take place. The Commission has therefore imposed conditions that will serve to regulate the effectiveness of the termination of the alliance.

The conditions *inter alia* aim to prevent the exchange of competitively sensitive information by requiring the Construction Companies to ensure that any person who is directly and operationally involved in the mentorship and development of emerging contractors is not the same person the Construction Companies appoint as Trustee to represent the interests of the companies in the fund.

Further, the Construction Companies must also ensure that any person it appoints as a Trustee sign the necessary non-disclosure agreements to prevent the exchange of competitively sensitive information between an Alliance and other Construction Companies, and to ensure that competitively sensitive information does not flow from an Alliance to other Construction Companies through the fund.

Raubex (Pty) Ltd (Raubex), is a large construction company with a broad spectrum of expertise in all sectors of the construction industry is to form an economic alliance with Umso Construction (Pty) Ltd (Umso) and Enza Construction (Pty) Ltd (Enza), small to medium companies owned, managed and controlled by “historically disadvantaged persons” (HDPs).

Stefanutti Stocks (Pty) Ltd (Stefanutti) will form an economic alliance with TN Molefe Construction (Pty) Ltd (TN Molefe) and Axsys Group (Pty) Ltd (Axsys). JSE-listed Stefanutti Holdings is a large construction company with a broad spectrum of expertise in respect of all sectors of the construction industry.

TN Molefe and Axsys are both controlled by HDPs. TN Molefe specialises in civil engineering works whereas Axsys undertakes structural, civils, roads, earthworks and building construction projects across South Africa. Axsys is a newly incorporated company established for purposes of the proposed transaction.

The third merger is that of WBHO Construction (Pty) Ltd and Fikile Construction (Pty) Ltd, Edwin Construction (Pty) Ltd, and the Motheo Construction Group (Pty) Ltd.

WBHO is a wholly owned subsidiary of Wilson Balyley Holmes-Ovcon Limited (WBHO Group). WBHO is a large construction company with a broad spectrum of expertise in respect of all sectors of the construction industry. WBHO controls a number of companies in South Africa and around Africa.

Edwin, Motheo, and Fikile are similarly controlled by HDPs. Edwin is primarily is a civil engineering contractor, Motheo offers services in the construction industry including general building, with a focus on social housing and is also active in the civil engineering sector, Fikile focuses on building works – the building of multi-story residential and social housing as well as commercial property.

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