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 **19 July 2016**

**Competition Tribunal fines Isipani Construction R21.7 million for engaging in cover pricing**

The Competition Tribunal (“Tribunal”) has imposed a R21,7 million penalty on Isipani Construction (Pty) Ltd (“Isipani”) for engaging in cover pricing in two separate tenders involving construction projects in Stellenbosch.

The Competition Commission’s investigation found that Isipani had entered into a collusive relationship with competitor Neil Muller Construction (Pty) Ltd (“NMC”) during August 2010 and November 2010 in respect of two separate tenders, namely the alterations and additions to Stellenbosch University’s Engineering Faculty and the construction of a private building in Stellenbosch, the Tienie Louw Building.

Isipani had admitted to these offences, but opposed the remedy proposed by the Competition Commission (“Commission”), namely that it pay the maximum fine of 10% of its annual turnover in respect of each of the two contraventions.

After considering both mitigating and aggravating factors, the Tribunal ordered the company to pay an administrative penalty of R21 783 153.40 for both competition offences.

According to Isipani the alleged intention of NMC was to submit a bid at a higher price than Isipani in order to ensure that it did not win the tender, but remain on the University’s tender list to be invited to tender for future projects. Isipani submitted that the rationale for this practice of cover pricing was the fear that by not tendering pre-selected contractors, it may be excluded from future invitations by the University to tender.

Isipani, on the other hand, in both instances submitted bids with a view to being awarded the tenders, although in the end it was unsuccessful in both tenders.

The Tribunal found that the harmful effect of this practice to competition is that it excludes other more competitive firms from being placed on the University’s tender list and thus undermines not only the abovementioned tender process(es) but also future competitive tender processes. Cover pricing is an unlawful practice, which at the very least may deceive the customer in this case the University, about the source and extent of the competition which exists for the work in question.

Based on the number of contraventions admitted to by numerous construction firms to date, it is clear that the practice of cover pricing was pervasive in the South African construction industry.

Neil Muller Construction (NMC) has applied to the Commission for and was awarded corporate leniency.

Issued by:

Chantelle Benjamin

Communications: Competition Tribunal

Tel (012)394 1383

Cell: +27 (0) 73 007 5603

Twitter: @comptrib

E-Mail: [chantelleb@comptrib.co.za](file:///C%3A%5CUsers%5Cchantelleb%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5COVZTB0PH%5Cchantelleb%40comptrib.co.za)

On Behalf Of:

Lerato Motaung

Registrar: Competition Tribunal

Tel: (012) 394 3355

Cell: +27 (0) 82 556 3221

E-Mail: LeratoM@comptrib.co.za