

Construction industry making progress with deals to transform the sector

8th January 2018

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In a move that will see local construction companies further honour their agreements with government to ensure inclusivity for black contractors in the South African construction sector, the Competition Commission has recommended a number of merger deals to the Competition Tribunal for approval.

In October 2016, seven large listed construction companies made the commitment to either ensure that the equivalent of 25% of their yearly South African construction turnover is executed by black construction companies within seven years, or that more than 40% of their construction business is sold to black construction shareholders within the same timeframe.

The agreement was settled upon following the commission's investigation into cartel conduct in the construction industry between 2009 and 2013.

The settlement agreement also provides for the establishment of a trust fund aimed at developing and enhancing transformation in the construction industry, but the commission was concerned that interaction between representatives of the construction companies on the trust fund may lead to the exchange of competitively sensitive information.

The commission has, therefore, imposed conditions that will serve to limit the flow of competitively sensitive information within the trust fund.

To meet its commitments under the agreement with the

government, Raubex plans to form an economic alliance with small- to medium-sized companies Umso Construction and Enza Construction, which are owned, managed and controlled by “previously disadvantaged persons”.

The commission has referred the proposed transaction to the tribunal for approval.

Raubex’s alliance with the two emerging contractors is aimed at improving competitiveness, innovation and entrepreneurial opportunities in the construction industry.

The alliance will be active for a period of between seven and ten years, during which Raubex, which has a broad spectrum of expertise in respect of all sectors of the construction industry, will have to meet certain targets.

In addition to concerns regarding the flow of competitively sensitive information within the trust fund, the commission was also concerned that the Raubex alliance, which was temporary in nature, could facilitate conditions for future collusive conduct between Raubex and the emerging contractors after the termination date and it has, therefore, imposed conditions that would serve to regulate the effectiveness of the termination of the alliance.

Meanwhile, the commission has also recommended the tribunal approve a merger deal between JSE-listed Stefanutti Stocks, TN Molefe Construction and Axsys Group, whereby the parties would form an economic alliance.

TN Molefe is a wholly-owned subsidiary of the MC Share Trust, which is controlled by historically disadvantaged persons (HDPs). The company specialises in civil engineering works, including the construction and regravelling of roads, construction of bulk earthworks, rehabilitation and upgrading of pavements, construction and maintenance of stormwater infrastructure, construction management, the construction of sewer and water lines and the refurbishment of wastewater treatment plants.

Axsys is a newly incorporated company established for purposes of the proposed transaction. Similarly, Axsys is controlled by HDPs and undertakes structural, civils, roads, earthworks and building

construction projects across South Africa and its services extend to the petrochemicals, mining, water and heavy industry sectors. Lastly, the commission has recommended to the tribunal that the proposed merger be approved, with conditions, whereby Wilson Bayley Holmes-Ovcon Construction (WBHO) plans to form an economic alliance with Edwin Construction, Fikile Construction and Motheo Construction.

In November 2016, WBHO signed development agreements with the three black-owned contractors as part of the deal.

Under the terms of these agreements, Motheo, Fikile and Edwin will run their businesses independently of each other, with WBHO assisting financially with guarantee facilities and working capital; administratively, with project budgeting, tendering, reporting and strategic planning; and operationally, by advising and assisting in terms of construction site management.

About R4-billion a year had to be executed by the three contractors, which, in turn, would increase their turnovers substantially.

The Motheo Construction Group was established in 1997 by Dr **Thandi Ndlovu** and has, during its 19-year history, developed into one of the largest predominantly black woman-owned construction companies.

Motheo is a leading provider of social housing in the country.

Fikile Construction is one of the largest black woman-owned and -managed construction companies in the country and a significant player in the South African building and construction industry landscape.

Chaired by **Hlami Ndlovu** who took over from her father after his death in 2007, Fikile plays a pivotal role in the provision of social and commercial infrastructure and is a contributing partner in South Africa's transforming economy.

Eddie Mashishi is the CEO of Edwin Construction which is a black-owned and -managed multidisciplinary construction company active in the industry since 1997.

The group offers structural and technical expertise in the construction of roads and highways, dams and earthworks, bridges and interchanges.

Edwin is a firm controlled by historically disadvantaged individuals. Edwin is a civil engineering contractor which supplies services and operations in the construction of roads and highways, bridges and interchanges, as well as dams and earthworks sectors.