

Dear friends,

I am pleased to report that this long outstanding matter has finally been settled.

When the Power Group publicly stated that our 100-year vision was, *to improve the quality of life in Africa through infra-structure development*, every department and division started to use this vision as their benchmark. It helped us to be intentional in the scope of our projects and in the continuing development of good leadership and ethical practices.

It is the ethical practices and actions of our company that ensures our ability to stand out. Since the year 2000 the Power Group has taken the lead in cleaning up unethical practices in the construction industry – and this is something we will continue to do into the future – see

www.unashamedlyethical.com

Graham Power

Executive Chairman: Power Group



Tribunal accuses CompCom of acting like Shylock

Says R3m 'pound of flesh' from firm that admitted to bid-rigging contravention by a subsidiary is too much.

[Roy Cokayne](#) / 13 September 2019 00:22



The Competition Commission's offices in Pretoria. It has been accused of putting Power Construction through 'a lot of expense and aggro'. Image: Moneyweb

A Competition Tribunal panel member has accused the Competition Commission of having the approach of ruthless moneylender Shylock in Shakespeare's *The Merchant of Venice* at times because of the way it "wants to extract its pound flesh all the time".

The member, Enver Daniels, said on Wednesday that the philosophy and culture of the commission must change.

"I have been in this tribunal since January 2017 and have been appalled by some of the settlements and how money is squeezed out of small business people right around the country," he said.

Daniels made these comments during a hearing into a settlement agreement between the commission and engineering firm Power Construction in terms of which the firm admitted to a once-off bid-rigging contravention by Power Construction West Cape – which it acquired in 2007 in terms of an internal restructuring – and agreed to pay a fine of R3 069 887.43.

The tribunal confirmed the settlement agreement on Wednesday.

Power Construction CEO Graham Power chairs the Unashamedly Ethical movement, which challenges people to "do the right thing right now".

Layne Quilliam, appearing for the commission, said the contract that formed the subject of the settlement agreement dated back to 2006 when Power Construction West Cape was requested by a competitor, Haw & Inglis, to submit a cover bid for a tender by the SA National Roads Agency (Sanral) for the periodic maintenance of a section of the N1 between Touws River and Laingsburg.

Quilliam said Power Construction West Cape had no intention of bidding for this tender but was requested to submit a cover bid to ensure there was a sufficient number of bidders so that Sanral did not cancel the tender.

Instigator granted leniency

The tender was awarded to Haw & Inglis, which subsequently applied for and was granted leniency by the commission for its involvement in this bid-rigging case.

Quilliam said the commission cited Power Construction in its complaint referral to the tribunal to try and address a risk it had identified of non-recovery of any fine that may

be imposed by the tribunal against the dormant shell that was Power Construction West Cape.

The tribunal in 2016 rejected an application by the two companies to have the charges against them dismissed, with the Competition Appeal Court in 2017 dismissing an appeal against this decision.

Firm offered R2m settlement

Quilliam said that following the Competition Appeal Court judgment, Power Construction approached both the tribunal and the commission, and submitted “with prejudice” an offer to settle the matter.

He said the settlement amount in the prejudice offer was about R2 million, which amounted to 2% of Power Construction West Cape’s turnover in 2007, while the settlement before the tribunal was for a fine of about R3 million, which amounted to about 3% of its annual turnover in 2007.

Quilliam said mitigating factors accepted in determining the quantum of the penalty included that the appeal court said cover pricing was the lowest of the egregious collusive conduct.

First offence, cooperative, did not benefit

The commission also took into account that it was a first offence and that Power Construction was self-reporting and admitted Power Construction West Cape’s involvement, had sought to narrow the issues and remove the risk of non-payment for the commission, and had not received a loser’s fee or any money from the successful bidder, he said.

Daniels said that despite Power Construction saying it accepted that Power Construction Western Cape was guilty but that it did not know there was something wrong, the commission saw there was a common director and assumed Power Construction must have known that collusion was taking place.

“You put Power Construction through a lot of expense and aggro in a construction market that is shrinking and the huge expense of counsel and coming here and arguing the matter,” he said.

“You really are being like Shylock and surely under these circumstances, as an organ of state, you should be saying thank you for coming to us.

“Isn’t that the sort of behaviour we want from these construction companies and others when they acquire other firms and they pick up there were contraventions [of the Competition Act]?” he said.

Penalty ‘reasonable’, says commission

Quilliam said the commission believed the penalty was reasonable taking into account penalties paid by other firms that settled cases quickly under the fast track settlement process and phase two process.

Daniels believed Power Construction should be given a discount on the initial amount of 2% of turnover and questioned whether the tribunal simply had to accept a settlement that had been negotiated.

Greta Engelbrecht, appearing for Power Construction, said they shared the sentiment expressed by Daniels and always hoped to get the lowest settlement.

Firm wants to move forward

But she said her client had come to a negotiated settlement and accepted it as an appropriate fine despite it being “a matter of great personal pain and shock to Mr Power that he found himself involved in this”.

In the spirit of the Unashamedly Ethical movement, which was to accept responsibility for that which had been done, Power Construction wanted to make the payment, put it behind them and to go forward, she said.

Engelbrecht added that it was clear from the statute and case law that the tribunal must interrogate settlement agreements.

“But I’m simply saying that Power [Construction] isn’t coming here to snatch a bargain. We are not trying to convince the tribunal today that we must get a lesser payment,” she said.

“Of course, the tribunal may go away and interrogate the settlement agreement and may decline to approve the settlement agreement on the basis proposed.”