



**COMPANY POLICY
ON COMPETITION
COMPLIANCE**



COMPANY POLICY ON COMPETITION COMPLIANCE

1. COMPLIANCE WITH COMPETITION LEGISLATION

WBHO is subject to competition legislation in various jurisdictions where it is active. All employees have a responsibility to comply with the provisions of competition legislation and are to take all necessary steps within their power to personally ensure compliance with the Competition Laws applicable to the country in which the company operates and in line with WBHO procedure, as well as in respect of every employee of the company for whom they are responsible, and must immediately report to the company any breaches of such legislation of which they become aware. Employees are referred to the sections of the WBHO Code of Conduct which deal with Competition Compliance, Compliance with the laws, Bribery & Corruption and Reputation & Quality.

WBHO expressly prohibits engaging with a competitor in relation to any of the specific issues set out in paragraph 2 below, given that such discussions or agreements could lead to a significant financial penalty being imposed on the company and could also conceivably result in charges being preferred against the company and employees in their personal capacity.

Employees who contravene competition legislation in any material respect will be subject to disciplinary sanctions and/or may be summarily dismissed for gross misconduct.

2. SALIENT POINTS OF THE LEGISLATION

It is unlawful to engage in discussions or agreements with competitors of WBHO in relation to any of the following:

Collusive tendering / bid rigging, and in particular, participating in any agreements or discussions with competitors regarding any of the following:

- whether or not WBHO will participate in a tender or bid;
- whether or not WBHO will refrain from participating in a bidding process;
- co-operation in any way in order to facilitate the awarding of a particular tender/contract to a particular bidder;
- the price for a product or service which the bidder will tender (e.g. "cover pricing");
- The margins which will be applied;
- the volumes of a particular product or service that will be offered; or
- conditions or qualifications of the tender

Dividing markets by allocating customers, suppliers, territories or specific types of goods or services, including any of the following:

- the geographic areas in which WBHO and/or its competitors will compete or not compete;
- the customers to whom WBHO and/or its competitors will or will not provide services;
- the suppliers from whom WBHO and/or its competitors will or will not buy;
- the specific types of goods or services each of them will sell or produce; or
- the allocation and maintenance of existing market shares, geographical focus and/or customer bases

Agreements or discussions with competitors aimed at directly or indirectly fixing a purchase or selling price or any other trading condition, including participating in any agreements or discussions with competitors regarding any of the following:

- the amount or percentage by which prices are to be increased;
- discounts and allowances offered to customers;
- the process or formulae used to set prices or margins;
- rebates or credits afforded to customers/suppliers;
- the timing, size and scope of price adjustments

Competition laws also regulate dealings between a firm and its customers and suppliers. In most situations, competition laws adopt a so-called “rule of reason” approach, in other words, the efficiencies and other procompetitive gains resulting from the transaction are weighed against its anti-competitive effect.

Accordingly, WBHO employees are required to consult WBHO’s in-house competition compliance officer before concluding any of the following agreements or arrangements:

- exclusive supply agreements - whereby a supplier sells its products only to one buyer for the purposes of a specific use or resale;
- exclusive purchasing agreements - the purchaser is prevented from purchasing competing products from anyone other than the supplier;
- agreements which contain territorial restrictions; and/or
- entering into any agreement or engaging in any practice which restricts a customer or supplier in its ability to do business.

Certain additional provisions of the South African Competition Act apply where a firm is dominant.

In circumstances where WBHO subsidiaries/business units may conceivably be construed as dominant, therefore, the employees who are involved in the relevant subsidiary/business unit should ensure that they consult WBHO’s inhouse competition compliance officer , who will provide the necessary advice or obtain external legal advice as appropriate, and that:

- the pricing policies of the relevant subsidiary/business unit have received prior approval from in-house or external competition counsel and should be reviewed on an annual basis;
- they do not refuse to give a competitor access to an essential facility¹ when it is economically feasible to do so, unless granting access will compromise or impair the relevant subsidiary/business unit’s business;
- they do not engage in an exclusionary act (i.e. any act that impedes or prevents a firm from entering into, or expanding within a market), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive gains;
- they do not require or induce a supplier or customer to not deal with a competitor;
- they do not refuse to supply scarce goods to a competitor when supplying those goods is economically feasible. Objective justifications for refusing to supply a competitor would include:
 - lack of capacity;
 - costs of supply would make the business unprofitable; or
 - the customer has a poor credit record;
- sell goods or services on condition that the buyer purchases separate goods or services unrelated to the object of the contract (so-called “tying” or “bundling”);
- force a buyer to accept a condition unrelated to the object of a contract;
- sell goods or services below their marginal or average variable cost (predatory pricing);
- buy up a scarce supply of intermediate goods or resources required by a competitor when it does not require the volume which it has secured;
- discriminate between customers which purchase similar volumes of the same good or services in relation to:
 - the price charged for the goods or services;
 - any discount, allowance, rebate or credit given or allowed in relation to the supply of goods or services;
 - the provision of services in respect of the goods or services; or
 - payment for services provided in respect of the goods or services, unless it is necessary to match a price or benefit offered by a competitor or makes only reasonable allowances for differences in cost or likely cost of manufacture, distribution, sale or delivery between the various customers.

Mergers and Acquisitions

WBHO employees involved in these activities are required to remain cognisant of the following:

- Mergers and acquisitions, joint ventures and other acquisitions of control of companies or other businesses can require notification to competition authorities in various jurisdictions and, particularly where such transactions involved competitors, may be subject to detailed competition law scrutiny. Particular caution should be exercised in conducting due diligence investigations of target companies, particularly where the acquisition target is a competitor. In certain cases, because of the commercially-sensitive nature of certain of the information provided for due diligence purposes (such as the prices (or range of prices) at which goods or services will be sold to customers; discounts and allowances offered to customers; the process or formulae used to set; prices or margins, rebates or credits afforded to customers/suppliers; premiums on products sold; the price (or range of prices) at which goods or services are purchased by the relevant firm; and/or price formulae or methods used for setting prices), independent third parties such as auditors or lawyers may be utilised to conduct part of the due diligence investigations relating to the sensitive commercial information of a competitor.
- Accordingly, WBHO employees should consult WBHO's in-house competition compliance officer in relation to all proposed mergers and acquisitions at the earliest possible opportunity. This should include all transactions in terms of which WBHO companies acquire assets or minority interests in other companies.

3. PREVENTATIVE TRAINING

WBHO has a competition compliance training program in place:

- All senior staff and staff dealing with tenders or procurement will undergo competition compliance training through Compliance Online.
- The training is internet based and requires the candidate to successfully complete each module before progressing further.
- On successful completion of the full training program, each candidate must sign an acknowledgment and declaration as per Annexure A.
Each candidate must do a refresher course at intervals not exceeding two years.

4. SELF CERTIFICATION

All senior staff and staff dealing with tenders or procurement are to sign a self-certification letter each year to confirm that they have not been involved in or are aware of any contraventions of competition legislation. Annexure B.

5. DISCOVERY / DETECTION AND REPORTING OF POSSIBLE IRREGULARITIES

Where an irregularity or instance of anticompetitive behaviour is suspected it must immediately be reported to the CEO. Should the person who discovered the irregularity wish to remain anonymous, that individual must

6. RESPONSE STRATEGY

The CEO together with Exco will decide on a strategy/action plan of how to deal with any incident.

This plan will include the following elements:

- Assessment of the extent of the problem
- How to report and preserve the evidence
- Appointment of an investigation team

- Whether to involve legal specialists
- Appropriate internal disciplinary action
- Engagement with the Competition Commission
- Consider measures to be implemented.

The Divisional MD and his/her subordinates will remain responsible for all the operational aspects of the particular business during the investigation and actions emanating therefrom.

It is important to ensure that WBHO maintains control of the investigation where outside specialists/service providers are appointed so as to ensure that the outcomes are in line with company values.

7. DISCIPLINARY PROCEDURE TO BE FOLLOWED

- Disciplinary procedures must be followed according to the company Industrial Relations policy.
- Where the employee is found guilty of an offence the proposed sentence/sanction must be submitted together with the full description and documentary evidence regarding the incident to the Chief Audit Executive for final adjudication.
- Where appropriate this judgement should be discussed and agreed to with the CEO and/or CFO.
- Any disciplinary action should be stringent where senior management is involved.