

A photograph of a modern building facade with large glass windows and concrete pillars. The building is illuminated from within, and the sky is a clear, light blue. The text 'COMPETITION LAW COMPLIANCE POLICY' is overlaid on the top left of the image.

COMPETITION LAW COMPLIANCE POLICY

WBHO

GENERAL
COMPANY
POLICY

	Competition Law Compliance Policy	Doc No.:	POL-GEN 006
		Rev. No.:	04
		Rev. Date:	05/10/2020

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1 PURPOSE

WBHO (the Company) is subject to competition legislation in the various jurisdictions in which it operates. All employees bear the 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 accordance with this Policy, as well as in respect of every employee of the company for whom they are responsible. Employees are required to immediately report any breaches of such legislation of which they become aware to the Compliance officer or Group Legal Officer of the Company. Employees are referred to the sections of the WBHO Code of Conduct that deal with Competition Compliance, Compliance with laws, Bribery & Corruption and Reputation & Quality and are required to familiarise themselves with the provisions therein.

WBHO expressly prohibits engaging with a competitor in relation to any of the specific issues set out in Section 4 below; given that such discussions or agreements could lead to a significant financial penalty being imposed on the Company and could conceivably result in charges being laid against the Company as well as employees in their personal capacity.

Please refer to Section 12 below for specific conditions applicable to the “VRP Alliance”.

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 ABBREVIATIONS & DEFINITIONS

VRP	Voluntary Rebuilding Program
MD	Managing Director
CEO	Chief Executive Officer
CFO	Chief Financial Officer
EC	Emerging Contractor

3 COMMUNICATION OF COMPETITION LAW COMPLIANCE POLICY

A copy of this Policy is available to all WBHO employees via the Procedure Manual on the WBHO Intranet or in the form of hard copies on request from the Company Secretary.

4 SALIENT POINTS OF THE LEGISLATION

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

- **Collusive tendering / bid rigging, and in particular, participating in any agreements, including understandings, arrangements or discussions, with competitors regarding any of the following:**
 - whether or not to participate in a tender or bid;
 - whether or not to 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;

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- 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 participating in any agreements, including understandings, arrangements or discussions, with competitors regarding the allocation of 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, including understandings, arrangements 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 process or methods used to determine discounts, allowances, 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 pro-competitive gains resulting from the transaction are weighed against its anti-competitive effect.

Accordingly, WBHO employees are required to consult WBHO's Group Legal 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, No. 89 of 1998 (“Competition Act”) apply where a firm is dominant.

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In circumstances where subsidiaries or business units of WBHO may conceivably be construed as dominant¹, employees of such subsidiary or business unit should consult WBHO's Group legal officer for the necessary advice or obtain external legal advice as appropriate, to ensure that:

- the pricing policies of the relevant subsidiary/business unit have received prior approval from in-house or external competition counsel (to be reviewed on an annual basis);
- they do not refuse to give a competitor access to an essential facility² 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;
- they do not 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");
- they do not force a buyer to accept a condition unrelated to the object of a contract;
- they sell goods or services below their marginal or average variable cost (predatory pricing);
- they do not 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;
- they do not 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.

¹ A firm is dominant if it has a market share of (i) at least 45%; (ii) at least 35% but less than 45%, unless it can show that it does not have market power (i.e. the power to control prices, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers); or (iii) less than 35% but has market power.

² An essential facility is an infrastructure or resource that cannot reasonably be duplicated, and may include, but is not limited to, facilities such as depots, harbour berths, railway tankers and other similar types of infrastructural facilities.

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5 MERGERS AND ACQUISITIONS

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

- Mergers and acquisitions (including through a purchase or lease of shares, an interest or assets of another firm), 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 Group legal officer in relation to all proposed mergers and acquisitions at the earliest possible opportunity. This should include all transactions in terms of which WBHO and/or its subsidiaries acquire assets or minority interests in other companies.

6 CONSEQUENCES OF A VIOLATION OF COMPETITION LAW

- The Competition Act allows for penalties to be imposed on WBHO.
- Additionally, since May 2016, certain of the conduct identified under paragraph 4 (namely, (i) collusive tendering/bid-rigging, (ii) dividing markets and (iii) directly or indirectly fixing a purchase or selling price) may lead to fines and/or imprisonment for directors or managers who caused, or knowingly acquiesced in, the conduct.
- Moreover, competition law violations are also subject to private damages actions that allow private parties (e.g. customers, suppliers or competitors) the right to recover damages caused by the violation.
- These penalties, private damages and damage to the reputation of a firm in the marketplace, can severely affect WBHO's ability to conduct business.

7 PREVENTATIVE TRAINING

WBHO has a competition compliance training program in place:

- All senior employees and those employees involved with tenders or procurement are required to 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 self-certification undertaking as per the example in Appendix A.
- Each candidate must complete a refresher course at intervals not exceeding two years.

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8 SELF-CERTIFICATION

All senior employees and those employees involved 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 (Appendix attached as sample).

9 DISCOVERY / DETECTION AND REPORTING OF POSSIBLE IRREGULARITIES

Where an irregularity or instance of anti-competitive 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 report the incident via Deloitte’s Anonymous Tip Off Hot Line.

10 RESPONSE STRATEGY

The CEO together with EXCO will decide on a strategy/action plan on 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 Managing Director 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 notwithstanding that where outside specialists/service providers may be appointed, such outside specialists/service providers should adhere to the terms and scope of their appointment.

11 DISCIPLINARY PROCEDURE TO BE FOLLOWED

- Disciplinary procedures must be followed according to the company Disciplinary Code & Procedure (PRC 069).
- Where an employee is found guilty of an offense, the proposed sentence/sanction must be submitted together with the full description and documentary evidence regarding the incident to the Group legal officer for final adjudication.
- Where appropriate this judgment should be discussed and agreed to with the CEO and/or CFO.
- Any disciplinary action should be stringent where senior management is involved.

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12 SPECIFIC CONDITIONS RELATING TO THE “VRP ALLIANCE”

12.1 Background

In November 2016, WBHO and other Construction Companies (“Construction Companies”) entered into a Settlement Agreement with the South African Government aimed at transforming the Construction Industry in line with the “Voluntary Rebuilding Program” (“VRP”).

In terms of the Settlement Agreement WBHO has undertaken to mentor three Emerging Contractors (“EC’s”) namely, Edwin Construction, Motheo Construction and Trencon Construction.

To facilitate the mentorship and development of the EC’s in terms of the Settlement Agreement, WBHO will in some respects acquire material influence over the direction, operation and competitiveness of the EC’s. As a result, WBHO and the EC’s have obtained approval from the Competition Authorities to operate in an alliance (“Alliance”) – effectively a long-term, sustainable joint venture. The approval took the form of a “merger” notification in terms of the Competition Act, which was approved by the Competition Tribunal on 21 February 2018, as amended on 19 July 2019, subject to various Conditions as itemised in Section 12.2 below (“Conditions”).

In terms of the approval, WBHO is permitted to operate in an Alliance with one or more of the EC’s as if the Alliance members were a single economic entity. This means that, so long as the Alliance is in place, the Alliance members will NOT be in contravention of the Competition Act when engaging in certain activities, which would normally be considered a contravention of the Act.

Examples include, inter alia-

- agreeing which Alliance member, or combination of members, will compete (i.e. submit tenders) for a certain project, and/or in a certain area, and/or for a certain type of work; and
- the exchange of competitively sensitive information (including pricing information) amongst the Alliance members’ provided that the exchange of such information is aimed at achieving the objectives of the Alliance (i.e. the mentorship, development and growth of the EC’s).

However, upon the termination of the Alliance³ the Alliance may no longer operate as a single economic entity and the Alliance members are required to operate completely independent of one another and compete vigorously with each other without engaging in the activities referred to above. Any such engagement after the termination of the Alliance is likely to constitute collusive conduct in contravention of the Competition Act.

12.2 Alliance Approval Conditions

The Conditions attached to the Competition Tribunal’s approval of the Alliance aim, inter alia:

- to prevent the exchange of competitively sensitive information through the transformation Trust Fund (“Fund”) established as part of Settlement Agreement;
- to ensure that after the termination of the Alliance, collusive conduct shall not take place between WBHO and the EC’s.

The Competition Commission has therefore imposed Conditions that will serve to regulate the effectiveness of the termination of the Alliance:

- to ensure the fair treatment of the EC’s by WBHO in the identification of potential projects which they are to tender for; and

³ The Alliance is due to terminate after a maximum period of 10 years from the date of its implementation.

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- to ensure that the Alliance members develop and implement a Competition Compliance Policy and that the Alliance members' relevant employees receive training.

As regards the Condition relating to the Fund:

- it aims to prevent the exchange of competitively sensitive information by requiring WBHO to ensure that any person who is directly and operationally involved in the mentorship and development of the EC's is not the same person appointed by WBHO as a Trustee to represent WBHO's interest in the Fund.
- WBHO must ensure that any person it appoints as a Trustee to the Fund signs the necessary non-disclosure agreement to prevent the exchange of competitively sensitive information between the Alliance and other Construction Companies who have also elected representatives to the Fund. WBHO must also put in place other precautionary measures to ensure that competitively sensitive information does not flow from the Alliance to other Construction Companies through the Fund.
- all information submitted to the Fund for reporting purposes must be aggregated such that it does not reveal Competitively Sensitive Information.

The Conditions also stipulate obligations relating to annual reporting on the progress of the Alliance and reporting upon termination of the Alliance:

- employees involved in the Alliance may need to assist WBHO in compiling certain reports:
 - an annual report to the Competition Commission detailing the development and mentoring activities it provided to the EC's as well as a list of all the projects that the Alliance has participated in.
 - on the first anniversary of the termination of the Alliance, a report to the Commission confirming that the Alliance has been terminated and that, the mentorship and development relationships and interactions between the Alliance members have ceased.

Appendix A Competition Law Training Acknowledgement Form & Self Certification Undertaking



Acknowledgement

You have successfully acknowledged completion of this programme:

- Programme: Competition Law - Construction
- Enrolment ID: EMP123
- Employer: WBHO
- Date completed: 01 January 2020
- Pass mark: 100%
- CPD points: 1.5 (ethical CEUs)

COMPETITION LAW TRAINING ACKNOWLEDGEMENT FORM & SELF CERTIFICATION UNDERTAKING

The Company together with its holding company, subsidiaries, associated companies and joint ventures that are effectively controlled by the Company, directly or indirectly (the "WBHO Group") is committed in its endeavours to ensure that it complies with the provisions of competition legislation, including the South African Competition Act 89 of 1998, in all jurisdictions where it conducts its business.

I hereby acknowledge that I have:

- a responsibility to comply with the provisions of competition legislation;
- been provided with access to the Online ELLO compliance training material at ello.complianceonline.co.za ("Training Material");
- read the Training Material and understand its contents; and
- completed the required test at the end of each module.

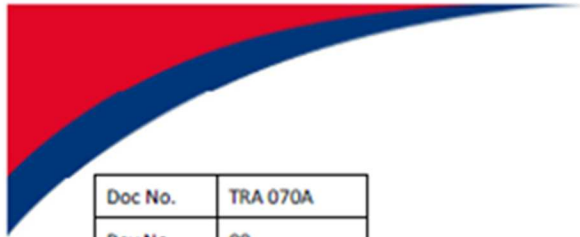
I hereby undertake to confirm to the company that:

- As part of my duties as a senior manager of the Company, I recognize the importance and consequently my duty to comply with the WBHO Group's Competition Compliance Policy as well as with competition legislation in all jurisdictions where the WBHO Group conducts its business.
- I undertake that I shall immediately refer any compliance question(s) I may have relating to competition legislation to the Company's Legal / Compliance Departments for guidance.
- I understand that any failure in my duty to comply with all relevant competition legislation in the course and scope of my employment with the Company could lead to significant legal and financial consequences to the WBHO Group and potentially charges being brought against both the Company and WBHO Group's employees in their personal capacities.
- I will take all necessary steps to ensure compliance with the relevant competition legislation by every employee of the Company and/or the WBHO Group for whom I am responsible and will immediately report any breaches of which I become aware.
- I acknowledge and agree that compliance in every manner with competition legislation, and where applicable, competition legislation in jurisdictions where the WBHO Group conducts its business, which affects my professional capacity is a fundamental term of my contract of employment with the Company.
- I acknowledge that any breach of the undertakings and acknowledgements given in this form may constitute a gross misconduct justifying appropriate disciplinary action against me and potentially, instant dismissal.
- I hereby confirm that during my course of employment with the Company, I have not been involved in any contravention of competition legislation in the past year.



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Rev No.	00
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Competition Law Training Acknowledgement Form & Self-Certification Undertaking

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I hereby acknowledge that I have:

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- read the Training Material and understand its contents; and
- completed the required test at the end of each module.

I hereby undertake and confirm to the Company that:

1. As part of my duties as a manager of the Company, I recognize the importance and consequently my duty to comply with the WBHO Group's Competition Compliance Policy as well as with competition legislation in all jurisdictions where the WBHO Group conducts its business.
2. I undertake that I will immediately refer any compliance question(s) I may have relating to competition legislation to the Company's Legal / Compliance Departments for guidance.
3. I understand that any failure in my duty to comply with all relevant competition legislation in the course and scope of my employment with the Company could lead to significant legal and financial consequences to the WBHO Group and potentially charges being brought against both the Company and WBHO Group's employees in their personal capacities.
4. I will take all necessary steps to ensure compliance with the relevant competition legislation by every employee of the Company and/or the WBHO Group for whom I am responsible and will immediately report any breaches of which I become aware.
5. I acknowledge and agree that compliance in every manner with competition legislation, and where applicable, competition legislation in jurisdictions where the WBHO Group conducts its business, which affects my professional capacity, is a fundamental term of my contract of employment with the Company.

Directors:

E.L. Nel BSc (Eng)/Chief Executive Officer • P.J. Faley BSc (Eng) • S.N. Gumede BA, LLB, LLM (Wits) • C.V. Heineke CA(SA) • E.A. Mashishi BSc Eng (Mining) M. Eng

Company Secretary

S. Vally-Kara FCS



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- I acknowledge that any breach of the undertakings and acknowledgements given in this form may constitute a gross misconduct justifying appropriate disciplinary action against me and potentially, instant dismissal.
- I hereby confirm that during my course of employment with the company, I have not been involved in any contravention of competition legislation in the past

Please print and sign a copy of this undertaking and submit it to Monette de Waal at WBHO Head Office. Keep a copy for your records.

Employee Signature

Name

Date

EXAMPLE

Directors:

E.L. Nel BSc (Eng)(Chief Executive Officer) • P.J. Fieley BSc (Eng) • S.N. Gunebe BA, LLB, LLM (Wits) • C.V. Herwood CA(SA) • E.A. Mashishi BSc Eng (Mining) M. Eng

Company Secretary

S. Vally-Kara FCS