



REJECTING COLLUSION AND CORRUPTION: WHERE TO FOR THE GOVERNMENT AND THE PRIVATE SECTOR

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INTRODUCTION:

Vice-Chancellor Adam Habib, students, faculty and guests, good evening.

I am delighted and honoured to be here with you tonight at the Wits Business School. Professor Habib, I would like to congratulate you on your appointment and wish you and the University of the Witwatersrand well as you embark on your journey of strengthening the position of this great institution to be a world-class centre of teaching and research.

I also want to say welcome to my special guests this evening, the learners and teachers from Siyabonga High School in Soweto. In a few weeks' time we will spend a morning together discussing a range of topics, from overcoming adversity, to setting strong life goals and working hard to achieve them. I am sure after tonight's talk you will ask me even more difficult questions when I see you at your school.

Thank you for inviting me to reflect on a matter that has occupied much of my time over the past 5 years. My talk this evening titled "*Rejecting collusion and corruption: Where to for the government and the Private sector?*" is shaped by principle not solidarity. I will not be presenting any views this evening in solidarity with big business, the construction industry, the Government or the Competition Authorities. I will raise issues as I see them as I would like to add my voice to the public debate about where our country is currently and how we can positively shape our future together. The National Development Plan calls for an active citizenry and I feel that the time has come for all South Africans to find their voices and reject collusion and corruption. This we must all do without the fear of repercussions from colleagues in business or government officials. A country in which citizens live in fear of their leaders is a country in decline.

As you know, I spent the past five years as CEO of the Aveng Group, a JSE-listed, global infrastructure group employing approximately 34 000 people and operating in 30 countries. The issue of collusion and corruption has shaped how we have come to view the construction industry, but corruption is also a more pervasive issue in our society, extending beyond just one industry or sector.

Earlier this year, the Global Corruption Barometer found that 47% of South Africans had paid a bribe to secure an essential service. 54% felt that corruption had increased in the last two years. 65% said that the problem was the most serious in the public sector.

However, not everything is gloom and doom. In the same survey, 89% of South Africans expressed a willingness to become involved in fighting corruption.

COMPETITION COMMISSION INVESTIGATION IN THE CONSTRUCTION INDUSTRY

First, I would like to share my Aveng journey with you. I took up the role of Chief Executive Officer at Aveng in July 2008 during the build-up to the 2010 Soccer World Cup, a very exciting time for our country and for the industry. I was excited by the role of infrastructure development in the overall growth and development of a country. Within weeks of taking up my new role I received the first subpoena from the Competition Commission. I remember that moment clearly because it was the first time in my life that I received a subpoena of any kind.

The Competition Commission wanted Aveng to respond to evidence presented by another company that some 10 companies had engaged in anti-competitive practices related to the precast concrete market. The suspected cartel involved price-fixing (including credit terms and level of discounts), market allocation and collusive tendering in precast concrete products, mainly pipes, culverts and manholes. The cartel was alleged to be run nationally but in three regions in particular: Gauteng, Kwa-Zulu Natal and Western Cape. What I found quite staggering was that the cartel was formed in 1973, as I happily played in the yellow sand on the mine-dumps of Riverlea waiting for my ninth birthday to arrive. The precast concrete products cartel was in existence for 34 years. In 2009 Aveng agreed to pay a fine of R46,3m which was 8% of that division's turnover.

In the meantime, further investigations were percolating in the Pretoria offices of the Competition Commission.

In January 2009, Murray & Roberts filed applications for corporate leniency on behalf of its Mesh and Reinforcing Steel (rebar) divisions for engaging in price fixing and dividing markets by allocating customers in the mesh and rebar markets. By their own admission there was agreement on price fixing, market allocation and collusive tendering in the supply, cutting, bending and sale of rebar. Over 15 firms were ultimately implicated in these arrangements. In March 2011 I once again signed, on behalf of the company, a consent order admitting that the company had entered into agreements with its competitors to fix prices and divide markets by allocating customers in the mesh and reinforcing steel markets, and also to collusive tendering. Aveng agreed to pay an administrative penalty of 128.9m (8% of Steeledale's annual turnover in FY2008) and agreed to cooperate with the Commission in prosecuting the remaining respondents and in the Fast Track Process, and to implement a competition compliance programme.

By now I was becoming intimately familiar with the Competition Commission which has been a dubious honour.

THE COMPETITION ACT OF 1998¹²

Some of the key objects of the Competition Act of 1998 are to promote and maintain competition in South Africa, competitive pricing and product choices. Did we really expect that the strike of a pen in 1998, signing the Act into law, would in that instant alter business culture and behaviour that had

¹ The Competition Commission website (www.compcom.co.za)

² The Competition Tribunal website (www.comptrib.co.za)

existed for decades? No, this was a corporate culture that would take greater intervention to change. In addition to the matters in the construction and engineering sector that I was dealing with, the Competition Commission has prosecuted numerous cases in sectors including bread, glass, steel, cement, medical products and polymers. Clearly, rooting out anti-competitive behaviour in industry is part of the unfinished work of South Africa's transition.

CONSTRUCTION INDUSTRY INVESTIGATION

I would like to take you behind the drama of the news coverage to give you a sense of what it was like to try to run a major global corporation in the middle of what I have come to regard as the biggest corporate scandal in post-apartheid South Africa. In addition to managing this crisis, global markets collapsed in October 2008, shortly after I became the CEO. Prior to the onset of the global financial crisis steel prices rose by as much as 70% and volumes went up by 40%. The World Cup was looming and companies were very busy constructing the infrastructure for this global event. Labour disruptions were not as widespread and violent as they have now become. And so, as the world entered an unprecedented global financial crisis, this regulatory tsunami hit the company and indeed the sector. This was quite a lot to absorb just a few months into the job.

The Competition Commission started their probe in 2009 and only after realising the scale of the problem introduced the Fast Track settlement process in 2011. This investigation grew in the first 2 years and eventually would consume much of my time. I sometimes joked with colleagues that we should look for a new CEO as I had taken on the role of Chief Competition Officer. I also took this matter quite personally as I found myself at the centre of a scandal that was not of my own making and violated my views on corporate citizenship and values. My loneliest moments in this journey were when I had to face the public and recognise the doubt in someone's eyes as to whether I was truly involved in this affair.

But there was serious work to be done. The company had to win business globally, deliver projects profitably, manage the downturn by managing cost, procurement, safety etc. It is quite difficult to manage the complexities of a major company in the middle of an almost daily bombardment of Competition issues. I want to warn all Directors and Senior Officers of companies who are tempted to engage in collusive or cartel behaviour. You should not only focus on the profitability of a cartel but you should realise that cartel behaviour comes at a major cost which includes creating an internal climate where trust and suspicion dominate corridor talk as internal investigations unfold. It also brings on reputational risks, financial exposure, and exhausts management's time. My message is simply this: The long term costs of cartel behaviour are materially worse than the benefits of any possible short term profits. It undoubtedly has a major impact on staff. I addressed a management forum during the investigation and I was confronted by 2 members of staff who were with the company for about 20 years. They asked me, rather emotionally, how they were going to explain to family and friends that the company that they worked for was accused of this behaviour. Dishonest behaviour by leaders, and this applies to political and business leaders, has a major impact on the psyche of an institution and its people.

We had to do a thorough internal investigation to establish what occurred in the company. Unlike some of our competitors, the Aveng management team was new. We were at a distinct disadvantage as we faced a major hurdle in getting some current and former employees to co-operate. We took this matter very seriously and we implemented measures to root out any potential

collusive behaviour. Some of the measures we took included interviews with key staff, a program offering immunity from dismissal in exchange for information on suspicious behaviour or involvement in anti-competitive behaviour, tip-off hotlines, and on-line training. When we became aware of possible breaches and potential irregularities these were thoroughly investigated. As you can imagine, these initiatives required considerable internal and external resources including an in-house legal team, 2 external law firms, as well as an internal communication teams and external consultants to deal with messaging, responding to media queries, and staff queries. We developed holding statements, staff handbooks, crisis communication strategies, letters to key stakeholders, and letters to staff. I cancelled at least 2 trips to Australia that were scheduled for board meetings dealing with our Australasian operations to be available to deal with the Competition Commission.

As a result of all of these efforts we discovered 57 prohibited practices. There were 21 prescribed practices, meaning practices which occurred more than three years before the complaints were initiated and thus fell outside of the scope of this investigation. Of the 36 offences that could be prosecuted we received conditional immunity in respect of 26 infractions of the Competition Act. The Commission also found that Aveng was implicated in 10 prohibited practices which Aveng was not the first to disclose as well as 7 prohibited practices which it had not disclosed, of which the Commission said they had evidence. Aveng agreed to settle in respect of these 17 prohibited practices. I must tell you that there were some projects where we had no evidence of our own. In these circumstances we had to make some tough calls in order to put matters behind us and had effectively to accept the word of others. You need reliable evidence to contest a matter successfully.

The Construction Fast Track Settlement Process incentivised firms to make full and truthful disclosure of bid-rigging in return for leniency in assessing penalties. Twenty one firms responded and over 300 instances of bid rigging were revealed. By the time 15 construction firms agreed to settle fines totalling R1, 46bn the pattern of behaviour over the years was quite clear. The evidence collected by the Competition Commission showed the various ways in which firms have historically determined, maintained and monitored collusive agreements, including:

- Meetings to divide markets and agree on margins
- Different combinations of firms coordinating tenders over different projects
- Firms colluding to create the illusion of competition by submitting sham tenders (“cover pricing”) to enable a fellow conspirator to win a tender
- Firms agreeing that whoever won a tender would pay the losing bidders a “loser’s fee” to cover their costs of bidding
- Sub-contracting to compensate losing bidders

I will give you a snapshot of how I understand this all to have worked between the companies from my experience through the process. The main practice appears to have been what is called “cover-pricing”. A strong management system was clearly in place, including succession planning because when one person was promoted or left the company he would bring his successor to a meeting (according to evidence submitted, these meetings usually occurred at 5 star hotels), introduce the new person and do a formal hand-over. Some of the younger people knew that if they wanted to get ahead in their companies this was “the way it is done”. The tenders were then allocated as follows: the firm not wanting the business gives a “cover price” to a competitor who then wins the award on submitting a lower price than the “cover price”. In some cases, the firm submitting the “cover price”

will be compensated through a “losers’ fee”. These “losers’ fees” were apparently disguised through fake accounts in line items called plant and machinery, scaffolding hire or labour. Money came in and out of these accounts, they kept a score sheet to keep track of who owed monies, invoices were raised, and if another project came up offsets were applied. In the steel cartel, which was a selling environment (not tenders), they circulated price lists and agreed on a price ceiling in certain markets. I am sure we have all heard that there is no honour amongst thieves. In private tenders the tender results are not necessarily made public. In one cartel an MD attended every meeting and dutifully signed off on the price fixing agreement. He kept winning all the tenders because he lied to his partners about his tender pricing and they were not wiser because the tender results were not disclosed by the client. He told them it must be due to his strong customer relationships. As I discovered the details of how these cartels worked I often asked myself what is the moral boundary between collusion and corruption. Collusion is broadly defined as secret or illegal co-operation or conspiracy especially in order to cheat or deceive others. Corruption is broadly defined as lacking integrity, dishonest or fraudulent conduct, typically involving bribery, or the action of making something morally depraved. I believe that collusion is just a nice sanitized word for corruption.

FALLOUT IN PUBLIC OPINION

Is the fallout that has followed justified? I definitely think so! The public sense of betrayal in this matter, compounded by being bombarded daily with stories of government sector corruption and the perception of collusion between political and economic elites in questionable BEE deals, is almost the last straw for an increasingly cynical public.

In the public sector, we have seen numerous cases of corruption and wasteful expenditure in recent years. The Public Service Commission (PSC) publishes annual findings on the extent of financial misconduct reported by the public service. In their Report on Financial Misconduct for the 2009/10 financial year, 1,135 incidents were reported with the most common types being: fraud, financial mismanagement, theft and misappropriation & abuse. A big concern of the Director General of the PSC is that these cases of financial misconduct appear to be underreported. The Public Service Commission has seen financial misconduct in the public service growing rapidly over the last 3 years – from R100m in 2008/09 to R346m in 2009/10 (up 346%) and growing to R932m in 2010/11 (up 269%). The PSC estimates that financial misconduct for 2011/12 could exceed R1bn, confirming a widespread belief that there is an increasing prevalence of financial misconduct and a decline in ethical behaviour.

From these examples of public and private sector collusion and corruption in South Africa, we can see that it is a widespread problem that is rapidly becoming part of the fabric of our society. It is not unique to any one sector. Our institutions, public and private, are being reduced to nothing more than a site for accumulation.

A POLICY DILEMMA

I want to share a major dilemma with you, which is something I have grappled with as CEO and that the country will also have to deal with. In the wake of this scandal, and the clear national outrage, how do we make sure that people are held accountable without damaging a key repository of skills and a platform for growth in our country? I must tell you that my impulse when this issue first arose was to fire everyone who had any potential relation to what I would consider misconduct. According

to the Competition Commission, 300 contraventions of the Act by construction companies were uncovered. Now for the company the problem is this: Construction and Engineering, especially heavy civil construction, requires considerable skill and experience. You cannot fire everyone because you have a company to run and projects to deliver. You rely on your tried and tested engineers to deliver projects that are safe and profitable. In South Africa today approximately 40% of engineers are above the age of 55, another 40% are between the ages of 40 and 55, and the rest below the age of 40. Your colluders are mainly in the older more experienced age demographic. I really grappled with this issue. You need to manage a process where people feel that they could trust the system and make full disclosures without the fear of losing their jobs. A prisoner's dilemma for them indeed! And so it is necessary to put in place a scale of measures for dealing with people in the organization. Blatantly lying about your involvement for me meant a disciplinary hearing and dismissal. Some people resigned before I could fire them. Full disclosure that assisted the company at the Commission meant a written warning, possible demotion, or a bonus being withheld. One person took the company to the CCMA for not paying his bonus. I was looking forward to this matter being heard in public but then he withdrew the action. We also had to keep some employees in the company as we needed their co-operation during the investigation. A practical approach is required to dealing with the wrong-doers whose skills were needed but not lose sight of the fact that how this was handled would either shift this rotten culture into a new ethical space or be seen to merely give people a slap on the wrist and move on. I believe our approach worked because we had no outstanding issues at the Commission when we signed the agreement. Everything that we found, and that our competitors alleged about Aveng, is now known to the Competition Commission and the public.

The country, and our government in particular, will also have to grapple with this dilemma, and key Ministers are voicing their concerns on how to move forward. Last week, speaking at the Master Builders annual congress, the Minister of Public Works Minister Thembelani Nxesi said that the findings of the Commission left the government with a dilemma as wrong-doers had to be held accountable but that government is also dependent on construction as a vital sector of the economy. Earlier this year the Minister of Economic Development, Minister Ebrahim Patel, emphasised the importance of having an appropriate balance between taking actions necessary to stamp out collusion and price fixing in the construction industry, and ensuring that South Africa has an industry that can deliver on the mandate of the infrastructure build programme.

There are several reasons why the government is understandably cautious about what to do next.

One reason is that the construction industry is cyclical and has been in a protracted slump since the World Cup; more than 109 000 jobs have been shed since 2008 and today the civil construction industry employs 105,522 people, less than half of what it did just 5 years ago; The construction industry is a significant contributor to South Africa's overall economy. For the most recent 4 quarters (ended Q2 2013), the Construction Industry contributed 3.7% (R119bn) to South Africa's total GDP³.

Something that may not be widely recognised is the importance of large construction companies with strong balance sheets to the sustainability of the industry. These large contractors provide a necessary element of stability to the industry through their ability to use their balance sheets to temporarily fund projects and withstand losses on projects that incur cost overruns. Smaller

³ Gross Domestic Product Second Quarter 2013, Statistical Release P0441, Stats SA, 27 August 2013

contractors do not have this ability to withstand occasional shocks, as was the case with the bankruptcy of Sanyati, which went bankrupt due to outstanding payments for completed projects. Large contractors also provide invaluable opportunities for skills development to young engineers due to their diversity of projects, geographic diversity and highly skilled staff.

Another reason that policy-makers should be cautious when considering what to do next is that the construction industry is a very low margin industry with most companies only achieving profit margins in the low-single digits. In a Statistics South Africa (Stats SA) report published in July 2013⁴ (based on 2011 data), the local construction industry was reported to earn the smallest profit margin of all nine industries it was compared with for the study. South Africa's construction industry profit margins plunged from 5% in 2009, when the industry probably benefited most from the construction of 2010 Soccer World Cup infrastructure, to 2.8% in 2011. Mining and quarrying was the most profitable sector, recording a profit margin of 16.5%. With the slow local industry environment, margins have compressed over the years due to fewer projects in the market attracting more bidders. These figures should not be used to cushion large firms from criticism around corruption.

Industry fundamentals and the need for strong balance sheets should not be used as an excuse to exclude small and emerging players. The Deputy Minister of Transport, Jeremy Cronin, correctly pointed out in parliament that the debate should never be framed as emerging versus emerged contractors because such a debate can quickly become racialised. The big firms must find new ways to work with and support small emerging firms, and through an open discussion with the government, public sector infrastructure spending should be leveraged to target the empowerment of emerging contractors.

A strong domestic industry will also make South Africa highly competitive on the rest of the continent. Africa is home to 7 of the world's 10 fastest growing economies⁵. This rapid growth is causing demand for new infrastructure, and the new infrastructure is an important enabler of this continued growth. South African companies, like much of the rest of the world were initially slow to spot African opportunities. But we have now made huge strides in investing in the rest of Africa and have continental champions in many areas from banking to mining, telecoms to consumer goods. A strong South African construction industry can also capitalize on opportunities where it can use its skills and experience to assist in driving this growth. Today only about 10% of African trade is with other African countries. We need cross-border infrastructure to connect countries and regions with each other to facilitate trade. Africa must trade with Africa, and we need a strong base and capacity to lead infrastructure development to make this happen. A weakened local industry will limit our ability to deliver infrastructure domestically and on the rest of the continent, where we compete against leading international firms with even stronger balance sheets and a greater depth of skills.

The case against collusion is strong. The case for a strong and viable industry is clear. So how do we deal with this management and policy dilemma? South Africa is not the first country to deal with widespread collusion in the construction industry. In 2003 the Netherlands fined 22 companies for bid rigging practices and the fines totalled 100 million euros. They used a fast track process and recommended that the authorities pay careful attention to bid procedures and requirements to limit cartel risks. In the UK in 2009 the Office of Fair Trade imposed fines totalling 129,2m pounds on 103

⁴ Construction Inc profit margin at low 2.8%, shows Stats SA, Engineering News, 3 July 2013

⁵ World Economic Forum on Africa 2012, World Economic Forum

construction firms who colluded mostly in the form of “cover pricing”. It is interesting to note that the UK regulator specifically recommended that infringing construction firms not be automatically excluded from future tenders or be subject to measures making it more difficult for them to qualify for such tenders, as they already paid significant fines, and could be expected to be aware of competition rules and are more likely to be compliant. I trust that the Construction Industry Development Board (CIDB), the South African regulator of the construction industry, will study this recommendation as it presses ahead with its own investigation. The CIDB has said that it is considering blacklisting construction firms, a measure that I regard as a blunt policy instrument that will be impractical for the country. This goes to the heart of our dilemma. We will not be able to deliver a R4 trillion infrastructure programme or play a meaningful role on the continent without this industry. And we want justice for what has happened, as well as a transformed, ethical industry.

The handling of the future of the construction industry is going to be a very divisive issue, with some people on the one hand wanting to focus only on our national aspirations and putting the past behind us, and some on the other hand wanting justice, restitution and retribution against an untransformed industry. This matter is clearly going to require leadership. The leaders of construction firms, boards, CEOs, and executives, have a fresh opportunity to demonstrate to the public that they are actively working to change the culture of this industry. They must actively demonstrate a commitment to ethics and integrity in their companies. They must transform their businesses at all levels. I want to link the issue of collusion to transformation. In looking at the way in which these cartels were able to operate, some for more than three decades, the small close knit group of people over the years, with hand-picked successors from the same circles, allowed these activities to go undetected until the programmes of the Competition Commission kicked in. These leaders must now make more serious efforts to bring new people onto their teams, black professionals, women, and young bright engineers who do not carry the baggage of this cultural history. My personal view is that organisational culture does not reside in CEO memos. People are the custodians of culture. The leadership of these firms must demonstrate that the good that will come from this is a new culture based on people in the industry with strong values and ethics.

WHERE TO FOR THE GOVERNMENT AND THE PRIVATE SECTOR?

Another issue that I would like to deal with is criminal prosecutions. The Deputy Minister of Transport, Jeremy Cronin, told parliament a few weeks ago that the government was looking strongly at bringing criminal cases against individuals who are implicated in collusion. It is quite clear from the public outrage that the fines levied by the Competition Commission are not deemed to be sufficient. This represents a dilemma for the Competition Commission, which relies on its leniency programme and conditional immunity to break cartels. Unlike the USA where the department of justice investigates and prosecutes cartel conduct, and is therefore in a position to grant immunity from prosecution, in South Africa the Competition Commission is an administrative body. This creates a paradox for a “would be” whistle-blower, who in theory can be applauded by the Commission for his disclosure, but runs the risk of the National Prosecuting Authority pursuing him criminally through the courts. This does not mean that criminal prosecutions of individuals should not follow. My personal view is that the prospect of jail-time will deter cartel behaviour. I have seen individuals who were involved in this misconduct leave the company and take up employment elsewhere, some with competitors, and continue relatively unscathed while the company pays huge fines and has to manage reputational damage for a long time to come. We must make people

personally accountable for their conduct. The Competition Law Amendment Act is currently with the president awaiting his signature. This Act criminalizes cartel conduct within the Competition Act. The standard of proof used by the Competition Authorities versus the standard of proof used by the courts are vastly different and could result in the whole legal process being compromised and substantially weaken efforts to break cartels. It would seem that the best way to ensure the continued success of deterring cartel behaviour while strengthening the prospects of success in the prosecution of individuals would be to have a strong co-operation between the Competition Authorities and the National Prosecuting Authority, so that any person who approaches the Commission with evidence of involvement in this illegal behaviour will have the comfort that his immunity will be applicable across government.

In his article 'Antitrust, Amnesty, Game Theory, and Cartel Stability', published in the *Journal of Corporation Law*⁶, Christopher R. Leslie makes a compelling case for the granting of leniency to discourage cartel activity. The Antitrust Division of the United States Department of Justice reformed its amnesty policies in 1993, making its Corporate Leniency Policy (amnesty programme) the most effective generator of cartel cases and is believed to be the most successful programme in US history for detecting large commercial crimes⁷. Prior to this programme, the US government received one application each year from firms willing to expose a cartel in exchange for leniency. Currently, the US government receives three applications each month. Leslie's study shows that granting amnesty makes cartels more fragile.

The fast track process and leniency programme adopted by the Competition Commission is in line with best practice globally and they should be commended for dealing with this investigation responsibly. Given the scale of the contraventions, if they had chosen to prosecute each matter individually the costs would have been prohibitive, the investigation would have run for years and South Africans would still be in the dark on the extent of this behaviour.

We need to find a new, more effective way of working. In the cartel investigation conducted in the Netherlands you will recall that one of their recommendations was that public and private sector clients were advised to pay close attention to the design of bidding procedures and bid requirements to limit cartel risks into the future. I believe that the current bid design and procedures in South Africa are at the heart of the endemic corruption in our country. We must ask ourselves what are the objective circumstances that creates an environment for this behaviour to flourish. Major national projects that require public tenders must be subject to a transparent discussion between the government and industry, and everyone must understand the rules of the game. When bid designs and processes are traded as commodities for consortiums to gain competitive advantages over each other or for BEE tender arbitrage, it creates an environment for dishonest and collusive behaviour. A public space must be carved out for authentic engagements to take place between the government and the private sector without unfair advantage being derived by one party. Besides mitigating the corruption risk in state tenders, an early dialogue between industry and government regarding capacity, project design and financing can also lead to cost efficiencies. The delivery of Medupi has been very difficult for Eskom, as it has struggled with managing 30 main contractors and

⁶ Leslie, Christopher R., *Antitrust Amnesty, Game Theory, and Cartel Stability*. *Journal of Corporation Law*, Vol. 31, pp. 453-488, 2006. Available at SSRN: <http://ssrn.com/abstract=924376>

⁷ Gary R. Spratling, *Detection and Deterrence: Rewarding Informants for Reporting Violations*, 69 *Geo Wash L Rev.* 798, 799 (2001)

300 sub-contractors. We have all seen the public's negative response to project delays and cost over-runs. I do not think it is possible for a state entity to manage 30 interface risks, and through earlier engagement we must avoid this from happening again. At the time that this decision was taken there were few bidders and nobody was willing to take on a turnkey project, so it is understandable how this developed. Greater dialogue will save tax-payers a lot of money. A new contracting model must also be explored to address the lack of capacity in government and the low skill levels amongst small contractors. The premise of a new contracting model must be to form a 3-way partnership between government, contractors (both major contractors and small local contractors) and design consultants to ensure sustainability and skills transfer through hands-on project experience. A dialogue of this nature can also deal with how public infrastructure spend can be leveraged to develop small and emerging contractors.

In November 2011, the government published the National Development Plan, outlining its vision to make meaningful, rapid and sustained progress in reducing poverty and inequality over the next two decades⁸. I want to congratulate the Minister of Planning, Mr Trevor Manuel, and the National Planning Commission for mapping out a solid trajectory for our country in the years to come. All South Africans should find ways to put this plan into action. Infrastructure development is a cornerstone of these plans, with the goal of increasing Gross Fixed Capital Formation to about 30% of GDP by 2030 (from 17%). As part of this plan, government has budgeted to spend R827bn on infrastructure development over the next three years, by building roads, hospitals, dams, schools, electricity plants and ports and rail systems. The value of major infrastructure projects in progress or under consideration in the public sector totals R3.6 trillion, with R2.0 trillion being in the electricity sector and R820bn in the transport sector. Several private sector projects have also been identified in the 18 Strategic Integrated Projects (SIPs) of the Presidential Infrastructure Coordination Commission (PICC), bringing the total value of projects being considered to over R4 trillion⁹. How will the roll-out of these very ambitious and laudable plans be managed so that we learn from the past and reject collusion and corruption in the bidding and awarding processes?

It is ironic that major infrastructure projects, which are meant to create a nations platform for growth, social stability, and a source of national pride, can equally serve to erode the value system of a society and undermine social cohesion through acts of corruption. It will be a national tragedy if we find ourselves debating corruption for the next 20 years with regard to this positive government plan for the future. And then there is the role of the private sector. If all of Eskom's guarantees are added together there is little headroom for great borrowings by the state, which does raise the question of how all of this will be funded. Private sector balance sheets must be leveraged more effectively and consideration should be given to allowing the private sector to build rail infrastructure. We simply cannot afford the ideological ambivalence towards the private sector that we witness too often, nor can we afford the dismissive attitude toward our elected representatives that we too often witness in the business community. If the government and business continue to operate separately in the shadows when it comes to major national initiatives we will see more collusion and corruption. With our relatively small local pool of engineering talent, strong state owned enterprises, and solid vision for the future as set out in the National Development Plan, Team South Africa needs a transparent dialogue on how we are going to do this. I wonder if we would be

⁸ National Development Plan: Vision for 2030, National Planning Commission, 11 November 2011

⁹ 2013 Budget Speech, Chapter 7: Infrastructure, 27 February 2013

discussing collusion involving World Cup stadia in 2010 if all parties had a transparent discussion at the time about capacity, skills and finance. I know that even if one firm successfully bid and won all the construction jobs they would not have been able to do it off their own balance sheet or skills base. We are now talking of R4 trillion infrastructures spend. Let us not repeat the same mistakes. Our government and our industry must plan the future together!

We also need an agreement between the government and all bidders for a public sector contract that they will abstain from bribery both during the selection process and project implementation. Bidders must agree to disclose all commissions and similar expenses paid by them to anyone in connection with the contract, with penalties being imposed when violations occur. Such penalties can include: loss or denial of contract, forfeiture of the bid or performance bond, liability for damages, blacklisting of bidders for future contracts and criminal or disciplinary action against government employees. Transparency International calls this an “Integrity Pact” and asserts that such agreements are necessary because “within industries, companies say they want to stop bribing but dare not because their competitors continue to do so¹⁰”. The adoption by all companies of a common standard of non-bribery will reduce the pressure to sustain corruption.

Before any further bids are brought to the market, I would like our Government to compel all bidders for a public sector contract, regardless of industry, to sign an Integrity Pact.

WHAT IS TO BE DONE?

I have had some time since leaving Aveng to reflect on issues of collusion and corruption and the general state of the nation in this regard.

Our society is unravelling under the weight of corruption in both the public and private sectors. In the private sector, we have seen an endless procession of cases across numerous industries being investigated by the competition authorities. In the public sector, the total drain of corruption on South Africa’s economy is estimated in the hundreds of millions of rands per year. This level of public corruption and misspent funds is not only undermining public faith in our democracy but robbing the poor of their most basic needs, including the provision of RDP housing, access to electricity and HIV treatment¹¹. On the back of successive price fixing and cartel cases exposed by the Competition Commission, the never-ending allegations of business and government corruption involving BEE deals and provincial tenders, can we blame a cynical public for wondering aloud who will cross the finish line first, big government or big business? Who is more corrupt, the public asks? We must all take responsibility for the current state of affairs.

Instead of addressing the issues head on, we continue to point fingers. The private sector accuses government of wasteful expenditure, while the public sector accuses business of being rampant capitalists. We need an end to the ideological cold war between the government and the business community. To win the war against corruption we will need to act decisively in the short term to make long term gains. This is not going to be easy. But let’s start by making people accountable for their actions. Prosecute individuals who engage in collusion and corruption, and if found guilty prohibit them from holding leadership positions. This applies to our politicians as well. Ed Koch, the

¹⁰ Peter Eigen, Head of Transparency International, gave a talk at SAIIA on corruption in March 2004

¹¹ The Cost of Public Corruption in Democratic South Africa, Money and Politics Project, December 2011

former Mayor of New York City once said, “The knife of corruption endangered the life of New York City. The scalpel of the law is making us well again.” We cannot afford a climate in which South Africans feel that if you are powerful you will not be held to account. And let’s hold our politicians to a higher standard where it is totally unacceptable to trade political influence for personal business deals. Our message to our elected politicians must be clear. If you want to be a politician by day and a businessperson by night then subject yourself to the scrutiny of the public so that your business dealings are transparent. The issue of the business interests of elected politicians is being grappled with around the world. We are not unique. I think it is reasonable to expect members of the executive arm of our government to refrain from getting involved in state tenders. Let us set some basic rules around this issue and apply them. Let us work together to overcome the fear that if government talks to industry as they plan a major initiative, the same people will arrive as bidders a few months later. We have to address this fear and include everyone, finding a new contracting methodology that promotes competition, strengthens our competitiveness and importantly brings small and emerging players into the economy. Let us all commit to signing an Integrity Pact, and understand that violations will carry severe penalties for our businesses.

One final thought from me. A big challenge for the students of Wits University and Siyabonga High school, and indeed all South Africans, is not to allow political parties to divide us on this important national issue of corruption. The construction cartel teaches us that collusion and corruption should not be reduced to a racial matter or a political party matter. All South Africans, black and white together, must unite to fight the scourge of corruption. This is what will make us all proud to be South Africans. It was Albert Einstein who said, “The world will not be destroyed by those who do evil, but by those who watch them and don’t do anything about.”

THANK YOU