



Recovering from ethical failure

The investigation by the Competition Commission into construction industry tender-rigging has created widespread awareness of unethical practices involving state and other contracts. Recent press reports claim that affidavits made to the Hawks' serious economic offences investigator and the National Prosecuting Authority detail a decades-long, formal kickback and price-fixing racket that allegedly involved prominent companies in the industry and that is speculated to be worth at least R30-billion.

THE OBVIOUS ETHICAL failures that this entails are compounded by the legal implications – namely that individuals who participate in cartels may face criminal prosecution, even though the provisions in the Competition Amendment Act that criminalise cartel conduct have not yet been signed into law.

Whatever the outcomes in this case – whether fines or immunity from prosecution in exchange for co-operation – all the companies involved will face the challenge of how to recover from ethical failure. Crucially, this entails re-establishing confidence in the organisation and the industry. This is critical

By Cynthia Schoeman, managing director, Ethics Monitoring & Management Services

to getting back to a situation of some trust, which is an essential ingredient for a successful – or even for a functional – relationship with stakeholders, whether employees, public sector officials, customers, suppliers, unions or lobby groups.

An approach that can build confidence and re-establish trust is the A5 approach. This includes five steps, namely admit; take accountability; apologise; make amends; and do not do it again. The first three steps are closely related and can largely be addressed together – although each one is important in its own right.

Admit

Admitting is the first step – which excludes the typical 'ostrich' approach of pretending nothing has happened or hoping the problem will go away over time. This is unlikely to be successful in the globally inter-connected world of today with excellent investigative journalism. Admitting to an ethical problem may well cause damage, but when the facts are surfaced by someone else, such as the press, it is almost certain to cause more damage. If a business leader admits to the problem as soon as it comes to his/her attention, the admission can even be positioned as being transparent.

Accountability

Taking accountability is an important second step. This is not achieved by the familiar tactic of blaming others. While others may have been directly responsible for the misconduct, that does not limit accountability to those individuals. Leaders should accept that they are also answerable for the conduct in their companies, as was illustrated by the resigna-

tion of the UBS CEO in September 2011 after the bank suffered a USD2,3-billion loss from unauthorised trades by one of its traders. The UBS Board acknowledged that the CEO considered it "his duty to assume responsibility for the incident".

A good example that still serves as a best practice case study of these two first steps, admitting and taking accountability, is the 1982 Johnson & Johnson Tylenol case when Tylenol capsules laced with cyanide led to seven deaths in the Chicago area of the USA. Johnson & Johnson's response extended to recalling of 31 million bottles of Tylenol capsules and offering free replacements in the safer tablet form. After reintroducing their tamper-proof product, within just a year

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Important acquisitions

Invicta has announced that its holding company for its South African operations, Humulani Investments, through its Capital Equipment Group (CEG), has concluded an agreement to acquire 100% of the ordinary share capital of High Power Equipment Africa (HPE).

“THE ACQUISITION IS A strategic investment which will enable Invicta to broaden its product offering to the plant hire, construction, quarrying and mining industries in South Africa and into Africa. The transaction has been approved by the Competition Commission,” says Tony Sinclair, CEO, CEG. “HPE, the Hyundai earthmoving and construction equipment and spare parts agency for South Africa and surrounding countries, will form part of Invicta’s Capital Equipment



Tony Sinclair, CEO, Capital Equipment Group, Invicta Holdings Limited.

Group and will continue to trade as HPE, operating as a separate entity from Invicta’s other related equipment operations.”

HPE, which has established a reputation for robust, quality machines, technical expertise and a reliable support service, is well positioned to increase its market share in the sectors in which it trades. In another deal, Invicta Holdings Limited has concluded a R1,36-billion deal, with the acquisition of Singapore listed Kian Ann Engineering Limited, global distributors of heavy equipment parts and diesel engine and truck spares. This is the third biggest company of its kind in the world.

“Kian Ann, with a similar profile to ESP – Equipment Spare Parts Africa – also part of Invicta Holdings – is an excellent strategic fit and will form part of the Capital Equipment Group (CEG),” says Sinclair. “This global acquisition, which is likely to increase Invicta’s turnover by 20%, is the first deal in the company’s international expansion strategy. This acquisition boosts Invicta’s focus on extending its existing after-market spare parts base by establishing a source hub in Asia – one of the major world growth centres. The com-

bined group, including Bearing Man Group (BMG), will have the muscle to leverage on operations in emerging markets, broadening CEG’s product offering and expanding its service to global customers.

“The world annual market for excavators is 458 000 units, with the Chinese market being 178 000 units of these. The South African market is approximately 1 000 units per annum.”

Kian Ann, with offices in Indonesia, Malaysia, China and Singapore, distributes over 1,3-million different components, covering 270 brands from 220 suppliers to international dealers and end-users in more than 50 countries, including China.

The range includes diesel engine and electrical parts, ground engaging tools, hydraulic components, transmission and drive parts, undercarriage parts and OEM and replacement components.

These components are used for excavators, bulldozers, wheel loaders, motor graders, trucks, trailers, power generation sets and marine engines. The machine brands that the Group’s products support include Caterpillar, Komatsu, Cummins, Hitachi, Kobelco, Sumitomo, Mercedes Benz, Volvo, Scania, Man, BPW, Hyundai, Samsung and Daewoo/Doosan.

CEG is strategically positioned to service all diverse sectors, including infrastructure development, construction, forestry, agriculture, mining and marine industries. ●

▶▶▶ they had regained a 30% market share of their original 37%.

The role their Credo (values and code of ethics) played was pivotal. It shaped, informed and kept aligned the myriad decisions that needed to be made and the priorities which underpinned them.

Apologise

Apologising is a critical step, ideally done in conjunction with admitting and taking accountability. It will not right the wrong, but, to the extent that the apology reflects the guilty party’s acknowledgement of the wrongdoing, it can create a platform for moving forward.

An apology has a moral value as well as an economic or business value if it, for example, reduces the damage of an ethical failure.

However, the benefit of an apology is significantly eroded if it is delayed. This is one of the things Rupert Murdoch got wrong in his handling of the *News of the World* phone hacking scandal. His apology to the family of Milly Dowler was made more than 10 days after the accusations first surfaced and a week after the newspaper was closed down.

Amends

Make amends is a crucial next step. Clearly

this should not be a token gesture, but should recompense those negatively affected appropriately. In the construction industry investigation, this is likely to be dictated by the outcomes and penalties imposed by the relevant authorities.

Again ...

Ensuring that the ethical failure does not happen again is the final step. This entails not only ensuring that the specific incident does not occur again – such as collusion – but also includes avoiding other incidence of misconduct.

Minimising the risk of ethical breaches necessitates formulating an integrated approach to ethics to improve ethics in the whole organisation and focusing on the creation of an ethical culture.

The latter is effectively realised by building and maintaining a high level of ethical awareness throughout the organization. This warrants that ethics is viewed as a strategic imperative, rather than an operational “nice to have”, that it managed proactively, rather than reactively, and that it is managed regularly, rather than on an ad hoc basis.

A tool such as the Ethics Monitor is ideally suited to support these goals. As a web-based ethics survey, it provides leaders with an

ethics rating for their organisation and an in-depth understanding of their company’s current ethical status. The survey also identifies the company’s ethical strengths, weaknesses and potential weaknesses, and what actions should be prioritised to improve the organisation’s ethical status.

Sharing the company’s ethics rating with internal and external stakeholders helps to rebuild trust and confidence. While this disclosure may seem like a bold move, reporting on a company’s ethics is already recommended by King III and required by the Social and Ethics Committee in terms of the Companies Act.

However, sharing a company’s ethics rating beyond the legal minimum reflects a level of transparency that is very conducive to increased trust and confidence. This benefit is also cumulative if the company’s ethics ratings are shared over time to show improved ethical ratings.

This situation therefore presents leaders in the construction industry – and in other organisations dealing with ethical scandals – with a crucial decision: whether to actively embark on the more effective management of ethics in their organisations to make a difference and to positively impact their ethical legacy, or not. ●