

Lebone's Response to Sam Sole of amaBhungane

Dear Sir,

This is Lebone's response to your email dated 17 April 2020.

We respond as follows: -

- a) First, we deal with the narrative that precedes the set of questions posed by you. Here we deal with inaccuracies and correct certain conclusions drawn by you which are false and not supported by any fact; and
- b) Secondly, and insofar as we are required to, we respond to your questions.

Controversial relationship

1. That the historical relationship between Lebone, Novus and the DBE was embroiled in so-called "*controversy*", an allegation going back a decade, proved to be of no substance and a response was then forthcoming. There was no irregular relationship which resulted in the awarding of contacts. Contracts were awarded to Lebone pursuant to a process of evaluation by independent bid evaluation and adjudication committees. These allegations were made by disgruntled bidders who were not successful and ran to the media. This was expected and their allegations were investigated and came to nought. Similarly, the current allegations have their source in another disgruntled rival bidder who did not succeed and is now using the media to do damage to a rival company. The impression that the contract was subject to controversy is false. Any perceived controversy was merely created by failed bidders..
2. Lebone does not engage in any improper or corrupt activities. Nor will it be associated with any party engaged in such activities.

The higher price

3. The suggestion that the Lebone Novus UTi Consortium (the Consortium) was improperly favoured in the 2015 bid notwithstanding the higher price is misleading and not supported by the facts. We point out as follows: -

- a) Not less than sixteen bidders initially submitted bids for the tender. There were only two short-listed bids. This was due to the sheer size of the contract. Only two bidders satisfied the mandatory requirements;
- b) The bids were evaluated by an independent bid evaluation committee (BEC) and thereafter further adjudicated by a bid adjudication committee (BAC) which then made a recommendation to the director general (DG). In addition, independent attorneys and auditors were appointed to provide oversight over the whole evaluation process.
- c) That the bidders had to first score 80% for functionality was published in advance and all bidders understood that the functionality score was a high 80% because DBE could not take the risk of awarding the contract to a supplier likely to default. Price was therefore only considered where a bidder first scored the requisite 80% functionality. Thus, the fact that CTP joint venture (the JV) was cheaper became irrelevant.
- d) The cheaper JV price cannot possibly be regarded as a “benchmarked competitive price”. In the litigation between the parties, the Consortium pointed out that the JV had priced its offer on a mistaken calculation of the number of pages to be produced. In fact, the Consortium pointed out that if the JV price was based on the correct number of pages, their bid would in fact turn out to be much more expensive. But, as pointed out above, once the JV failed on functionality, their price became irrelevant. For this reason, too, the suggestion that DBE overpaid to a tune of some R700 million is misleading as it is false.

The Consortium continued to deliver

4. The impression is created that even after the SCA set aside the contract, the consortium continued to deliver and get paid on an “*invalid*” contract. The contract was not invalid. Invalidity was suspended. This happened as a result of an order made by the SCA. Printing could not be suspended pending the re-evaluation of the bids. Thus, the SCA ordered that the invalidity be *suspended* for a year to enable the Consortium to continue to produce the workbooks, the production of which simply could not be interrupted.

The extension

5. It is correct that the Consortium was granted an extension for another two years. This was done in terms of a court order. The SCA ordered a re-evaluation of the bids and the successful bidder was to be awarded the contract for two years. That Caxton learned about it from the stock exchange is irrelevant. Further, the JV is entitled to request reasons for the award.

Residual sense of unease

6. It is unfortunate that the words used by the SCA have been taken out of context and indeed, twisted to infer that this was a reference to possible corruption.

We respond as follows:

- a) The passage quoted out of the judgement makes it plain that there was “*no suggestion of corruption*”. This comes as no surprise as at no stage of the litigation did the JV raise any suggestion of corruption in the awarding of the bid;
- b) The *unease* referred to was a reference to the consensus seeking approach adopted by the BEC. The judgement then sets out exactly why the BEC fell short of the required standard. The “*cluster*” of facts considered, and which induced a sense of unease, is then stated in the judgement. None of these facts suggest any corrupt influence in the scoring of functionality. On the contrary, it is evident that the “*sense of*

unease” is based on a highly theoretical point about the scoring methodology adopted.

- c) In so far as you mention that none of the members of the BEC seemed to be aware of the Treasury implementation guidelines for scoring, none of the legal teams were aware of them either until a late stage in the court hearing;
- d) The CTP JV has scored consistently below the required threshold for functionality. The Consortium on the other hand scored consistently far above. Mindful of the importance of the tender to fulfil the DBE’s constitutional duty to provide education to all learners in South Africa, the DBE’s reluctance to appoint a service provider without proven capacity to deliver is not unjustified.

The Commission agreement

- 7. We first note that it is obvious that you were handed a copy of the correspondence between Caxton and Novus. We also conclude that it was Caxton that handed the letters to you. Caxton or the JV failed in its bid no less than three times, they are sorely disgruntled and have now embarked on a campaign to discredit the Consortium and Novus. They do so recklessly and with the intention to defame all the senior officials of the Consortium, Novus and as well as the DBE. The JV is determined to damage its only competitor in the country and is determined to drive down its share price. You must be aware of the fact that there has been a bitter rivalry between Caxton and Novus (formerly Paarl Media) that has endured for more than a decade.
- 8. To suggest that the bid was awarded to the Consortium only due to Michael’s influence on the DBE is reckless as it is completely unfounded. The plain truth is that the JV’s bid simply did not match up to the Consortium’s; and failed where it matters most, for functionality. A reading of the court record of the various evaluations will highlight this fact. For example, the JV’s bid documents showed that they did not have the requisite warehousing and also did not have adequate or any warehouse equipment to deliver this contract.

Furthermore, the JV's bid proposed to rely on a number of unregistered or unlicensed motor vehicles to distribute the workbooks. The court record will show that the JV fell far short on various crucial elements of functionality. It was apparent after a number of evaluations that the CTP JV had underestimated the size and complexity of the tender. The Consortium on the other hand, the record will show, provided verifiable proof that they were more than capable of delivering this contract.

9. It is important to note the actual scale of what we are dealing with: the contract required the following deliverables:
 - a) In 2018 58 256 330 books were delivered, made up of 344 titles, to 23 535 schools;
 - b) In 2019 59 068 455 books were delivered, made up of 344 titles, to 23 353 schools and
 - c) In 2020 60 108 295 books will be delivered, made up of 344 titles, to 23 298 schools.

The Consortiums superior functionality is demonstrated by the fact that over the past three years it achieved a 99.9% success rate in delivering all the workbooks and on time. This is a verified and audited result.

On the other hand, the CTP JV's bid represented a possible default where the DBE simply could not fail to have these workbooks on the learner's desks in execution of its constitutional mandate.

10. It is a fact that the Consortium succeeded in no less than three separate and independent evaluations. Each time the Consortium outscored the JV on functionality. For each of these evaluations, independent attorneys and chartered accountants were appointed to provide additional oversight over the process. None of these independent professionals reported any undue influence in the scoring process. To suggest that the Consortium was awarded the bid due to undue influence is not supported by any fact. It is also defamatory. It is simply not possible for Michael to influence some 30

independent officials from various different departments. The Consortium's bid was vastly superior to the JV's bid which was in fact inferior.

11. From the above information it must emerge that the scale of this contract is such that no single company in the country can, on its own, meet the functionality requirements. Even the CTP JV is made up of a joint effort and it was never Caxton's case that it can deliver this contract on its own.
12. The record of each evaluation was available, was consulted by the CTP JV and its attorneys and no evidence of corruption or any other form of undue influence emerged. The record was also made available to the courts.
13. The allegation that Lebone was paid a commission only for using improper influence to get work and pass it onto Novus is not true. Nor is it correct that Novus and DSV did all the work. Lebone was and is key to delivering this contract. For example:
 - a) Lebone prepared and presented the bid documents. To demonstrate the sheer scale of this, those documents were delivered in no less than 11 cartons, comprising 11 500 pages;
 - b) The complex submissions regarding pricing, printing, warehousing, and distribution was done by Lebone;
 - c) In the execution of the contract, Lebone liaised with DBE and conducted a call centre to co-ordinate orders from about 23 535 different schools spread out throughout the country;
 - d) Lebone was also responsible for printing and production of workbooks, it was not only Novus that did the printing;
 - e) The warehousing and warehouse operations were overseen by Lebone;
 - f) All queries from the DBE as well as the school principals were dealt with by Lebone;
 - g) Crucially, the invoicing for the workbooks was done by Lebone who were also responsible for obtaining payment from the DBE.

Keith Vroon

18. Vroon was the CFO/COO/CEO of Paarl Media/Novus Holdings from 1 August 2004 to 30 June 2018. All agreements signed by Vroon were within his authority and this includes the commission agreement. Keith Michael was a long-standing business partner of Novus and the reciprocal print and payment arrangement was well known to all and amended from time to time as required.

19. No commercial arrangements were ever made in anticipation of Vroon's resignation or for his own personal gain in any way whatsoever with any party whilst in the employ of Novus.

Vroon's business dealings with or on behalf of Novus ceased entirely after his exit from the business on 30 June 2018.

20. Of significance, after Vroon resigned from Novus, he was contacted by Terry Moolman of Caxton. Vroon was hosted by Caxton and was offered employment. He was also requested to identify and bring across Novus employees to Caxton. It is clear that Moolman is fixated on the workbooks contract which he is desperate to wrestle away from Novus by any means possible, fair or foul. At the same time, Vroon was considering offers from other companies, including Keith Michael.

21. Vroon formalised an arrangement with Keith Michael after turning down Moolman. The agreement with Michael was conceived and entered into well after Vroon left Novus. Funds were paid to Brand Me, not for t-shirts, but because Vroon was still in the process of registering his own legal entity for tax and vat purposes. There is nothing sinister in making payment to Brand Me. Moreover, any transactions between Vroon and Michael after Vroon's exit from Novus are of no concern to Novus or Caxton for that matter.

22. The information about Vroon and Brand Me was obtained illegally. We would like you to investigate the source of this information, and in particular, who obtained it and how. Amounts were/are received by Vroon as a result of the

commercial arrangements agreed upon post his exit from Novus and Terry Moolman has no right to being in possession of such information or obtaining such information by illegal means, let alone use it for malicious intent.

The Terms of the Commission Agreement

23. For you to understand the consortium agreement and the commission agreement, you must be aware of the following historical facts: -

- a) From the beginning of the Consortium, it was made clear that Novus (then Paarl Media) will engage Lebone as an empowerment partner. The idea was for Novus, a previously advantaged company, will empower Lebone, a Black owned company, to improve its capacity.
- b) From year one, Novus discharged its duty towards the empowerment objectives of the Consortium.
- c) The empowerment worked well and Lebone saw an improvement in its capacity year after year; to the point where today Lebone has become a direct competitor and commercial threat to the likes of Caxton. This is an added problem for Terry Moolman. He is now abusing the media for his own personal vendetta against his nearest competitors. Moolman would love to see the demise of Lebone and Novus, leaving Caxton with a monopoly. Besides, Moolman is having difficulty accepting that Black-owned and Black-conducted businesses are now his immediate competitors.

24. We now turn to the commission agreement. It is indeed unfortunate that you chose to quote certain clauses from the agreement out of context. Please read the whole agreement. In particular, read the whole of clauses 2, 4 and 5 together with new clause 1.18. There is nothing sinister about this agreement and it makes complete commercial sense. Firstly, the agreement relates not only to work done on the workbooks contract, but also to other work on other printing contracts. Mention of Lebone's access to business networks and possible need for additional capacity ought to be read in this context. Secondly, the agreement records the terms of income or profit sharing

between consortium partners; it also provides for a formula to calculate payments for “*COMPENSATION RELATING TO THE PRINTING WORK*” as set out in clause 5. The parties just chose to call this commission. It is in fact nothing more than payments due to Lebone for the extensive work it was doing. Payments to Lebone are for work done. By no stretch of the imagination can this be seen as irregular payments for the purpose of influence peddling or corruption. If this was the case, you will not expect the parties to record it in writing and have it approved openly by the board and still less would you expect them to define a formula and make payment through the banking system.

25. We are certain, that as a responsible journalist, you will publish the whole agreement and not merely the paragraphs chosen by Moolman.

Donations

26. Any donation to a political party is a private matter. Donations to political parties are not illegal. Nor do we see any evidence of the donations being made to improperly influence the workbook contract. What we see is nothing but unsupported allegations, speculation and bias. Not to mention that the allegations are defamatory.

The Current Position

27. It is obvious that you are in possession of the letter written to Novus by Caxton’s legal representative. Novus, through its own attorneys, have indicated to Caxton that a response will be provided. Perhaps you should wait for that response. A copy will be delivered to you.

28. Your choice of facts is biased and highly selective. Your assumptions are false. Your conclusions are unfounded and far-fetched.

The Questions

29. Ad question 2)

There is nothing untoward about the commission payments. The commission agreements were internal to and intrinsic to the consortium agreement and entered into for sound commercial reasons.

30. Ad question 3)

The commission payments had absolutely nothing to do with any kind of improper inducements. This is unfounded speculation on the side of Caxton who are being corporate bullies and who are desperate after having lost the tender for the third time. Perhaps the time has come for the media to take a look at the court record before making reckless and malicious allegations of corruption. The court record of the evaluation process will disclose the truth behind the JV's failure to obtain an award of the contract. They were simply not good enough.

It is clear that after having fought for the tender through vexatious litigation for more than four years and having finally lost, fair and square, Caxtons and CTP is now, in desperation, trying to tarnish the reputations of the Consortium, the DBE officials and all persons involved in the workbooks contract, by circulating fabricated and defamatory stories in the media.

31. Ad question 4) and 5)

Yes, the first workbook contract also required that payments be made to Lebone. The payments were made in the ordinary course of business.

32. Ad question 6)

The payments to Lebone represent an internal transaction between consortium members and does not involve or affect the DBE at all. The

payments had no impact on the price. The details of pricing appear in the bid documents, which were scrutinised by the BEC and BAC and which met with their approval.

33. Ad question 7)

For reasons stated above, there was no reason to launch any investigation.

34. Ad question 8)

There will be a response, to be delivered on or before the 27 April 2020.

We conclude by stating that although your bias is evident in your email, we still expect you to do the right thing and present the facts objectively and without any spin. We certainly believe you will publish the contents of this response; you have a duty to do so.

We also refer you to the press statement made by Novus on the 21 April 2020.



Keith Alfonso Michael
Chief Executive Officer
Lebone Litho Printers (Pty)Ltd
+ 27 83 379 7453