

Fighting bid rigging in public procurement

The Competition Council ("**Council**") has launched an awareness campaign to encourage contracting authorities, companies and individuals to report bid rigging in public procurement processes. To this extent, it has published several guides (in French) on its [website](#), highlighting different competition law issues that might be identified in this context:

- The guide "*The prohibition of bid rigging in public procurement*" describes different forms of bid rigging, such as:
 - bid rotation: occurring when bidding companies take turns at being the winning bidder;
 - bid suppression: occurring when a bidder stays out of a public procurement process so that another party is guaranteed to win the process; and
 - complementary or cover bidding: when bidding companies intentionally submit uncompetitive bids as a way of guaranteeing that their bid will not be selected, thereby ensuring that another, preselected bidder, will be chosen.
- The guide "*Joint tenders in the context of calls for tenders*" presents several criteria for compliance of joint tenders with competition law. In particular, joint tenders may be authorised if they benefit consumers and do not lead to the elimination of competition.

If the Council finds anticompetitive practices, the public procurement process may be annulled. Moreover, the companies involved may be ordered to pay a fine or compensation for the damages; they may also be excluded from public procurement procedures for a certain period. Finally, according to the Council, criminal sanctions apply to violations by violence or threat to the liberty of tenders.

The Council also underlines that companies have the possibility of benefiting from the leniency programme by reporting anti-competitive behaviour in exchange for full or partial immunity from fines.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.