



Anti-Competitive Practices

Ten parties, including contractors and individuals of sole proprietorships and partnerships, were found to have violated the First Conduct Rule under the Competition Ordinance (Ordinance), in one of the first competition cases involving the construction (fitting out) sector since the Ordinance came into full effect in December 2015.

The parties involved had entered into an agreement by which designated floors of the residential blocks at a public housing estate had been pre-allocated for carrying out fitting out work for individual tenants. The parties were also found to have agreed on the package prices for typical fitting out work items and promoted these packages on joint promotional flyers distributed to tenants. The Competition Tribunal held that such practices had the object of preventing, restricting or distorting competition and thus contravened the First Conduct Rule of the Ordinance.

Businesses and individuals should not participate in anti-competitive practices. They should seek relevant professional advice if there is doubt over whether their existing practice may contravene the Ordinance. Any suspected incidents of anti-competitive practices, such as bid-rigging, market sharing or price fixing, should be reported to the Competition Commission for further investigation.

Industry stakeholders should take note of this alert and adopt the recommended measures for a healthy, competitive construction market. Readers are reminded that the information provided should not be considered as legal advice.

Disclaimer

Whilst reasonable efforts have been made to ensure the accuracy of the information contained in this publication, the CIC nevertheless would encourage readers to seek appropriate independent advice from their professional advisers where possible. Readers should not treat or rely on this publication as a substitute for such professional advice for taking any relevant actions.

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Construction Industry Council

38/F, COS Centre
56 Tsun Yip Street, Kwun Tong, Kowloon
Hong Kong

Tel: (852) 2100 9000

Fax: (852) 2100 9090

Email: enquiry@cic.hk



Employer

- The goal of a procurement exercise is to extract the most value for money when acquiring goods or services. Competition between suppliers and service providers through a fair and transparent tendering process can help achieve this goal.
- The lowest tender price may not necessary represent the most value for money for a given purchase. In some cases, unreasonably low tender price may impact the tenderer's ability to deliver goods or services that meets expectations.
- Information about the tender and the project should be made available to all potential bidders by suitably open means.
- Consider including Non-Collusion Clauses in tender documents. Model clauses and related information is available at:
https://www.compcomm.hk/en/media/press/files/Model_Non_Collusion_Clauses_and_Non_Collusive_Tendering_Certificate_Eng.pdf
- Here are some warning signs that suggest bid-rigging may be happening:
 - Bids containing identical wording, particularly if the wording is unusual.
 - Bids containing the same handwriting or identical tables and forms.
 - Bids containing the same errors, e.g. typo, spelling mistakes, arithmetic errors.
 - Bids with identical pricing, including cost breakdown.
 - The same amendments being made to bids from different bidders.
 - A bidder that rarely bids but always wins when it does.

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- Report to the Competition Commission confidentially if there are suspected bid-rigging or other anti-competitive practices. Keep all documents and make notes of any conversation in relation to the tender to aid investigation

Bidders (Contractors, Subcontractors, Consultants, Service Providers, Suppliers)

- Do not discuss nor agree with competitors on prices, level of service or quality of goods to be provided, work or market allocation.
- Bid independently. Do not discuss nor agree with competitors on who should win a bid and act in such a way to facilitate the agreed outcome.
- Disclose to the Employer any necessary communication and information exchange between bidders and other related parties relevant to the tender exercise. E.g. Communication between the consultant preparing the tender and the contractor bidding for the project.
- Avoid sharing commercially sensitive information, such as future pricing or bidding strategy with competitors.
- Abstain from meetings where pricing and other bidding information are being discussed between competitors. Report to the Competition Commission confidentially if there are suspected bid-rigging and other anti-competitive practices. Keep all documents and make notes of any conversation to aid investigation.

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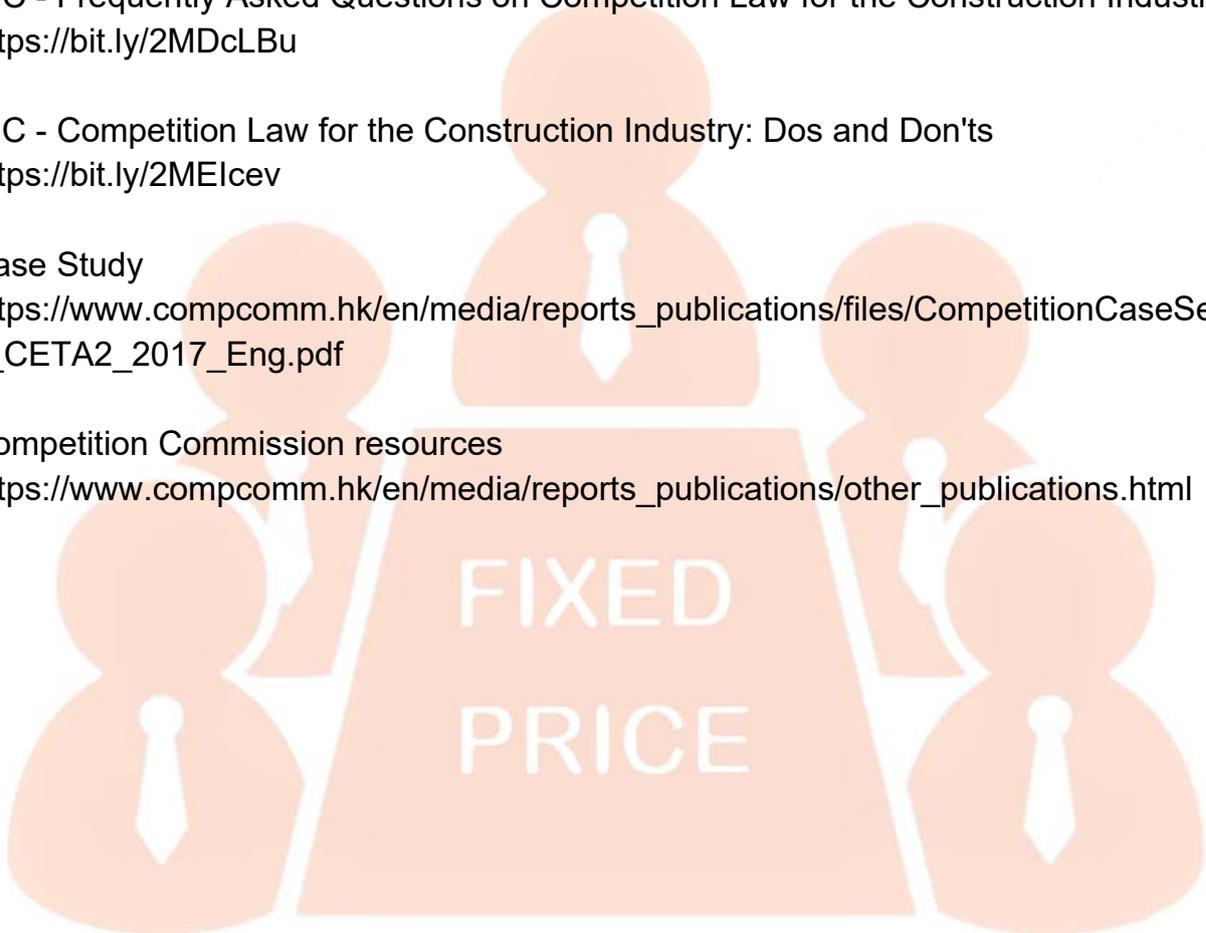
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Reference Material

- CIC - Frequently Asked Questions on Competition Law for the Construction Industry
<https://bit.ly/2MDcLBU>
- CIC - Competition Law for the Construction Industry: Dos and Don'ts
<https://bit.ly/2MEIcev>
- Case Study
https://www.compcomm.hk/en/media/reports_publications/files/CompetitionCaseSeries_CETA2_2017_Eng.pdf
- Competition Commission resources
https://www.compcomm.hk/en/media/reports_publications/other_publications.html



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