

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | COMPETITION

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Best Practices in the fight against cartels in public procurement tenders

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BEST PRACTICES IN THE FIGHT AGAINST COLLUSION IN PUBLIC PROCUREMENT TENDERS

On 30 December 2015, the Competition Authority (“CA”) published its Best Practices in the fight against collusion between competitors in public procurement tenders (“Best Practices”) (the Portuguese version is available [here](#)). The aim of this document is to help the contracting authorities to detect and to denounce situations of potential collusion between competitors in public tenders (bid rigging).

Bid rigging, prohibited by the Portuguese Competition Act, consists in the collusion of bids with the objective of eliminating or limiting competition in public procurement proceedings, thus leading to least favorable conditions for the State than the ones that would result from effective competition. Collusion in tender proceedings results in higher prices and in a decrease of quality and innovation.

The Best Practices not only identify the main evidence of collusion in public procurement tenders but also indicate the most common bid rigging situations, such as the (i) submission of rotative bids, the (ii) elimination of bids, the (iii) submission of fictitious or cover bids, the (iv) market sharing by customers or geographic regions or the (v) subcontracting another competitor to compensate for the success of the winning bid. Different forms of collusion can coexist in the same public procurement tender.

It is expected that the publication of these Best Practices will increase the level of awareness of the contracting authorities, likely resulting in more complaints and investigations into alleged practices.

Infringements to competition law are punished with fines up to 10% of the turnover of the infringing companies and with the ban, up to two years, on the right to take part in public tenders. The infringing companies may also be condemned to pay damages caused by the infraction, in result of private enforcement actions.

It should be highlighted that, recently, in August 2015, the CA fined in more than €830,000 five producers of modules for the participation in a price fixing and market partitioning cartel, in the context of the public tenders launched by Parque Escolar, E.P.E..

The publication of these Best Practices reinforces the importance of a prior assessment, by the companies interested in participating in public tenders, of the public procurement proceedings and the way the respective bids are presented. It also reinforces the importance of the implementation of a compliance program for competition law. Cuatrecasas, Gonçalves Pereira’s Competition Department has a vast experience in these matters.

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