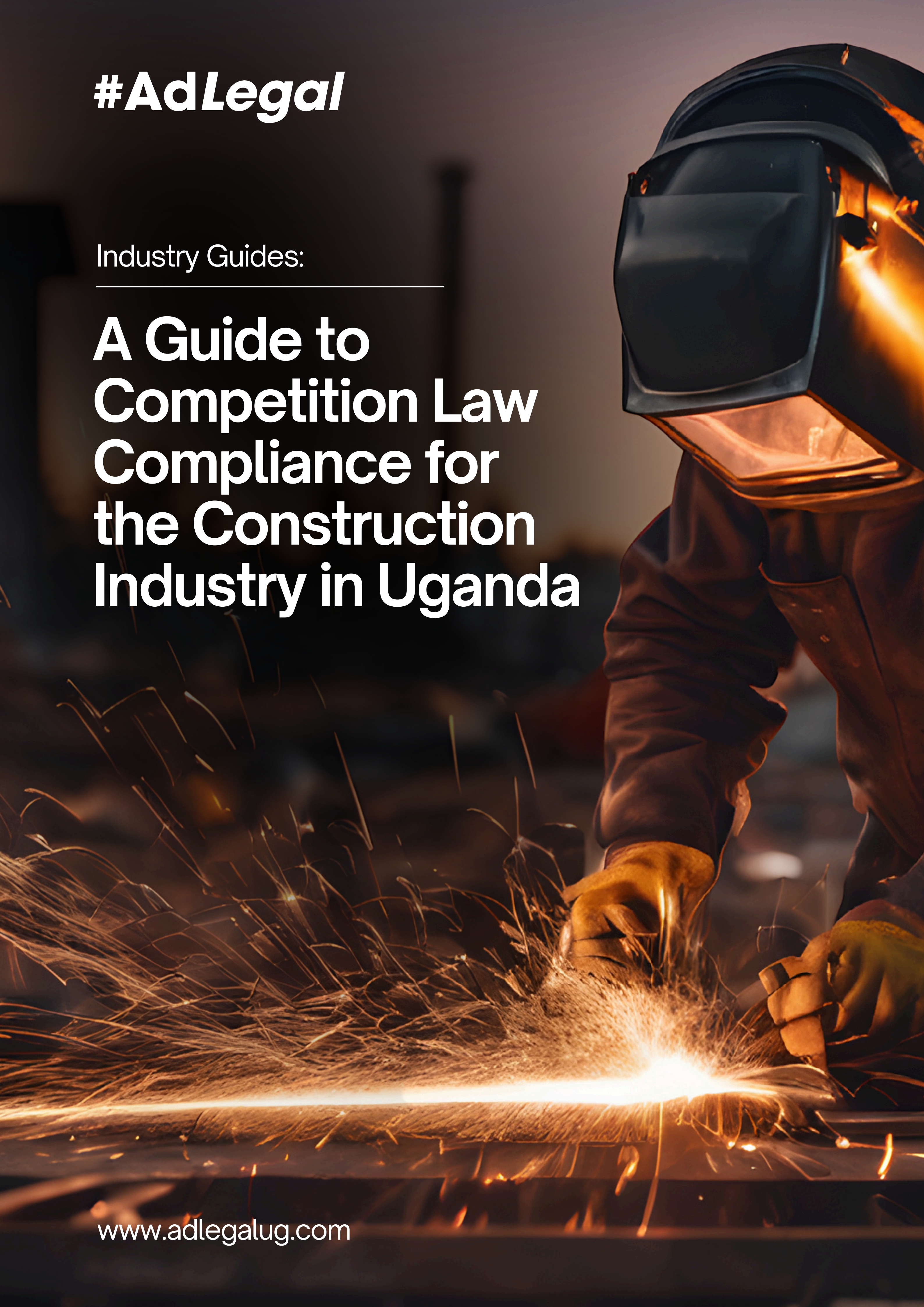

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Industry Guides:

A Guide to Competition Law Compliance for the Construction Industry in Uganda

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The Guide:

About the guide:

This Guide provides practical guidance on how businesses operating within Uganda's construction sector can comply with the Competition Act, 2024 and the Competition Regulations, 2025. It explains prohibited conduct, identifies competition risks commonly encountered in construction procurement, and outlines practical compliance measures that businesses should adopt to minimise legal, financial and reputational risks.

The construction industry:

The construction industry is one of Uganda's most significant economic sectors, contributing substantially to infrastructure development, employment, urbanisation and national economic growth. Public infrastructure projects, private commercial developments, housing schemes and engineering works involve substantial investments and highly competitive procurement processes. As a result, the industry is particularly vulnerable to anti-competitive conduct that undermines fair competition, increases project costs and deprives the public of value for money.

The new legal regime you should mind about:

Recognising the importance of competitive markets, Uganda enacted the **Competition Act, 2024 (Chapter 66)** and the **Competition Regulations, 2025** to promote fair competition, prevent anti-competitive conduct, protect consumers and ensure that markets operate efficiently. The Act applies to anti-competitive practices, anti-competitive agreements, abuse of dominant position, mergers, acquisitions and joint ventures that affect competition within Uganda. It seeks to promote economic efficiency, competitive pricing, consumer choice, employment and equitable participation in the economy.

For construction companies, contractors, subcontractors, consultants, engineers, architects, suppliers, project managers and procurement professionals, compliance with competition law is now an essential part of corporate governance and risk management. Decisions made during tendering, procurement, pricing, subcontracting, supplier negotiations and joint ventures must be made independently and competitively.

What is a construction business cartel and what are cartel activities?

A business cartel exists where two or more competing businesses secretly agree to cooperate instead of competing fairly in the market. Rather than making independent business decisions, the businesses coordinate their conduct in ways that reduce or eliminate competition. Cartels are among the most serious forms of anti-competitive conduct and are prohibited under Uganda's Competition Act and it's Regulations.

In the construction industry, cartel activities commonly arise during procurement and tendering processes and may include:

- **Price fixing** – where competing contractors, suppliers or consultants agree on the prices they will charge for construction works, materials or professional services, rather than determining their prices independently.
- **Bid rigging (collusive tendering)** – where competing bidders communicate before or during a procurement process and agree who will win a contract, while the others submit non-competitive or deliberately unsuccessful bids.
- **Market sharing** – where construction companies divide projects, geographical areas, clients or categories of work among themselves and agree not to compete for one another's business.

These practices distort competition by preventing clients from receiving genuinely competitive bids. As a result, governments, developers and private clients may pay higher prices, receive lower-quality - construction services, or have fewer choices when selecting contractors. Cartels also place honest contractors—those that compete fairly based on price, quality, innovation and efficiency—at a significant disadvantage.

> **Construction Example**
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> Three building contractors intending to bid for the construction of a district hospital agree that Contractor A will win the current project, while Contractors B and C submit intentionally higher bids. In exchange, Contractor B will be allowed to win the next government tender. Although the procurement process appears competitive, the outcome has been predetermined. This is a classic example of a construction cartel and bid rigging, and is prohibited under Uganda's Competition Act, 2024.

What is cover pricing?

Cover pricing (also known as cover bidding) is a common form of bid-rigging scheme. It is used during a competitive tender process as a way of fixing a bid to give an unfair advantage to a specific bidder.

The objective is to give the appearance of genuine competition, when in reality the bids are not competing.

This means that customers are not getting the best deal, because the bid that appears to be the best or lowest price is often inflated to an artificially high level and the customer is left with little choice as to who to award the contract to.

Cover pricing occurs when companies or individuals agree to do at least one of the following:

- A competitor submits a bid that they know is higher than the bid of the elected winner
- A competitor submits a bid that is known to be too high to be accepted
- A competitor submits a bid with terms they know will be unacceptable.

Why do businesses engage in cover pricing?

Businesses may engage in cover pricing for a variety of reasons, although none of them justify the practice under competition law. In the construction industry, cover pricing usually occurs during competitive procurement processes where one or more bidders agree to submit deliberately uncompetitive bids to ensure that a pre-selected contractor wins the contract.

In some cases, businesses use cover pricing to artificially influence tender prices, reduce competitive pressure, or secure reciprocal benefits from competing contractors. Such arrangements may involve promises of future subcontracting opportunities, future tender support, or other commercial advantages.

Some contractors also engage in cover pricing because they believe that declining an invitation to bid may affect their chances of being invited to future procurement opportunities. Rather than refusing to participate, they submit a deliberately inflated or otherwise non-competitive bid to give the appearance of competition while ensuring they do not win the contract.

In other instances, a contractor may recognise that it lacks the technical expertise, financial capacity, equipment, or personnel required to undertake a particular project. Instead of simply deciding not to bid, the contractor may contact a competitor to obtain information about pricing or agree to submit a higher bid so that the competitor secures the contract.

Although these practices may appear commercially convenient, they undermine the integrity of the procurement process. Cover pricing reduces genuine competition, inflates construction costs, limits opportunities for other qualified contractors to compete fairly, and ultimately deprives procuring entities of the best value for money. It also creates barriers for new and emerging contractors seeking to enter the market.

Who enforces competition law in Uganda?

Competition law in Uganda is administered and enforced by the Ministry of Trade, Industry and Cooperatives (MTIC) under the Competition Act, 2024. Uganda has entrusted the administration of the Act to the Ministry, which is supported by a Technical Committee on Competition and Consumer Protection.

The Ministry has broad powers to investigate alleged breaches of the Competition Act. It may initiate an investigation upon receiving a complaint from any person, following a referral from another authority, or on the basis of information obtained from any source. Where a complaint discloses a prima facie case, the Ministry may conduct a formal investigation into the conduct of the business concerned.

During an investigation, the Ministry may require businesses and individuals to provide relevant documents, records and other information necessary to determine whether the Act has been violated. Providing false or misleading information, withholding material information, or destroying documents relevant to an investigation constitutes an offence under the Act.

Where the Ministry concludes that a business has engaged in anti-competitive conduct, it may order the business to cease the unlawful practice, declare anti-competitive agreements void, impose financial penalties, award compensation to affected parties, modify offending agreements or, in appropriate cases, order the restructuring of a dominant undertaking to restore competition.

What are the sanctions and consequences for violating competition law?

The Ministry may take enforcement action against businesses of any size, including contractors, consultants, suppliers, developers and other participants in the construction industry. No business is exempt from complying with the Competition Act.

Businesses and individuals involved in bid rigging, cover pricing, price fixing, market allocation or other anti-competitive conduct may face serious legal and commercial consequences, including:

- **Financial penalties** of up to 10% of the average turnover of the business for the preceding three years for anti-competitive agreements, practices or abuse of a dominant position.
- **Orders requiring the immediate cessation of the anti-competitive** conduct and prohibiting its repetition.
- **Modification or nullification of anti-competitive agreements,** rendering unlawful arrangements unenforceable.
- **Compensation orders in favour of parties who have suffered loss** as a result of the anti-competitive conduct, where provided for under the regulations.
- **Criminal liability** for specific offences under the Act. For example, abuse of a dominant position may result in a fine of up to one hundred currency points, imprisonment for up to four years, or both, while knowingly providing false information or destroying documents during an investigation also constitutes a criminal offence.

What can construction businesses do to prevent involvement in anti-competitive behaviour?

Preventing anti-competitive conduct requires a proactive approach to compliance. Construction companies should establish a culture of fair competition and ensure that all employees and representatives understand their obligations under the Competition Act, 2024. Construction businesses should consider adopting the following measures:

- Ensure leadership commitment. Directors, owners and senior management should take responsibility for ensuring that the company complies with the Competition Act, 2024. They should actively promote ethical business practices and oversee the implementation of an effective competition compliance programme.

- **Develop a competition law compliance policy.** Every construction company should adopt a written policy explaining prohibited practices such as bid rigging, price fixing, market sharing, cover pricing and the exchange of commercially sensitive information. The policy should apply to employees, directors, subcontractors, consultants, agents and any other person acting on behalf of the business.
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- **Train employees and representatives regularly.** Directors, project managers, procurement officers, estimators, quantity surveyors, engineers, sales teams and other staff involved in tendering or commercial decision-making should receive periodic training on competition law. Employees should understand what conduct is prohibited and how to respond when faced with situations that may raise competition concerns.
- **Require independent tender preparation.** Every bid should be prepared independently without consulting competitors. Companies should never discuss tender prices, bid strategies, profit margins, subcontracting arrangements or intended bids with competing contractors before the submission of a tender.
- **Conduct regular compliance audits and risk assessments.** Businesses should periodically review their procurement practices, tendering procedures, communications and record-keeping to identify and address competition law risks. Internal reporting mechanisms should be established to enable employees to report suspected anti-competitive conduct confidentially.
- **Seek legal advice when in doubt.** If a business suspects that a proposed arrangement, tender strategy, joint venture or communication with a competitor may raise competition law concerns, it should obtain advice from a lawyer experienced in competition law before proceeding. Prompt legal advice can help prevent inadvertent breaches of the Competition Act.

About the Contributors

AdLegal is a specialized competition law practice group based in Uganda with a regional footprint across the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). The group's expertise spans merger & Acquisitions (M&A) transaction structuring and deal planning, competition compliance audits, cartel and abuse of dominance litigation, dawn raid response, competition regulatory advisory, sector-specific competition analysis, market inquiries, and advisory opinions on competition risks in commercial transactions and strategic investments.

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