

Enquiry Report

Bid rigging in the matter of Electricity Meter Procurement by Faisalabad Electric Supply Company

1. The Competition Commission of Pakistan (hereinafter referred to as the “Commission”) in order to identify possible collusive bidding cases in the public procurement market examined the tender invited by the Faisalabad Electric Supply Company (FESCO), vide its tender no. 6, dated 4 August 2009, to procure 3000 units of LT TOU Meters (hereinafter referred to as the “FESCO Tender”). Preliminary scrutiny of the FESCO Tender raised a suspicion of bid-rigging - a type of collusive behavior among the bidders prohibited under Section 4(2)(e) of the Competition Act, 2010 (hereinafter referred to as the “Act”).

2. The Commission decided to initiate a formal enquiry under Section 37(1) of Act. Pursuant to the powers contained in Section 28(2) of the Act, the Commission appointed Ms. Shaista Bano (Director Cartels and Trade Abuses) and Ms. Nadia Nabi (Joint Director, Cartels Trade Abuses) (hereinafter collectively referred to as the ‘Enquiry Committee’) to conduct an enquiry as to whether there is any collusion among the bidders, thereby violating Section 4 (2) (e) of the Act, and to prepare a detailed Enquiry Report under Section 37 of the Act.

I. UNDERTAKINGS

3. M/s Syed Bhais Private Limited is a company incorporated under the Companies Ordinance, 1984 and is a manufacturer/supplier of a wide range of engineering

- products and services, hence is an Undertaking in terms of Section 2(1)(p) of the Competition Act, 2010.¹
4. M/s Syed Bhais Electronics Engg & Control Private Limited (now known as KBK Electronics Private Limited) is a company incorporated under the Companies Ordinance, 1984 and is engaged in manufacturing engineering products and services, hence is an Undertaking as per definition given under Section 2(1)(p) of the Act.
 5. M/s Creative Electronics Private Limited is a company incorporated under the Companies Ordinance, 1984 and is engaged in manufacturing & supplying electric-power distribution & transmission products, therefore, is an Undertaking under Section 2(1)(p) of the Act.
 6. M/s Syed Bhais Private Limited, M/s Syed Bhais Electronics Engg & Control Private Limited (now known as KBK Electronics Private Limited and M/s Creative Electronics Private Limited are hereinafter referred to as (Syed Bhais), (KBK) and (Creative) respectively and are referred hereinafter collectively as Undertakings.

II. RELEVANT MARKET

7. Although a definition of a relevant market is not required in cases of alleged collusive tendering which is per se violation of competition law. However, a brief description of the relevant market² is given below for clarification and reference.

¹ Undertaking” means any natural or legal person, governmental including a regulatory authority, body corporate, partnership, association; trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision of services and shall include an association of undertakings.”

8. Relevant product market for the purpose of this Enquiry Report is LT TOU Meters specified by WAPDA/PEPCO for procurement by electricity distribution companies (DISCOs). This specific product or LT TOU Meters can be procured by FESCO from all those suppliers who are approved by WAPDA/PEPCO/DISCOs and are prequalified/registered for the material to be procured, hence the geographic market is whole of Pakistan. Accordingly the relevant market is LT TOU Meters procured by FESCO as per specification of WAPDA/PEPCO from any supplier in Pakistan qualified and approved by WAPDA/PEPCO/DISCOs for supply of such meters.

III. FACTUAL BACKGROUND

9. A letter was written to FESCO on 7 July 2010 requiring it to submit the information pertaining to the FESCO Tender, in particular, FESCO was requested to submit the following information:
- All Tender-related documents
 - Advertisements
 - Bids (including Bidders Profile)
 - Any documents related to approval of the bid
10. FESCO replied vide its letter dated 12 July 2010 that enclosed information on the following:
- Advertisement of tender No. 06 opened on 27 August 2009
 - Particulars of parties obtaining tender documents
 - Bids submitted and approval of Purchase Committee, FESCO.

² “Relevant Market” means the market which shall be determined by the Commission with reference to a product market and a geographic market and product market comprises all those products or services which are regarded as interchangeable or substitutes by the consumer by reason of the products’ characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.”

11. Advertisement of FESCO Tender shows that the tender was invited on 04 August 2010 from WAPDA/PEPCO/DISCOs approved manufacturers, prequalified in the required category for the year 2009-10 for the supply of 3000 units of LT TOU Meters.
12. A total number of 5 companies namely; M/s Syed Bhais Electronics Engg & Control (Pvt.) Ltd., M/s Syed Bhais (Pvt.) Ltd., M/s Micro Tech. Industries (Pvt.) Ltd., M/s Pak Elektron Ltd. and M/s Creative Electronics (Pvt.) Ltd. approached FESCO to obtain tender documents. However, only three companies; M/s Syed Bhais Electronics Engg & Control (Pvt.) Ltd., M/s Syed Bhais (Pvt.) Ltd and M/s Creative Electronics (Pvt.) Ltd. actually submitted bids for the FESCO Tender.
13. Invitations to FESCO Tender were opened on 27 August 2009. Bid schedules for tender submitted by all three undertakings/bidders revealed that identical rate was quoted and same quantity was offered by all the bidders. Each bidder quoted Rs. 9,450 price per unit and whereas the total quantity required in the tender was 3000 meters, against which each bidder offered 1200 meters.
14. All the bidders were requested by FESCO to submit their justified rates for the required tender, however, all the firms regretted to reduce the tender rates and Rs. 9,450 was offered as final price per unit.
15. The Purchasing Committee of FESCO (the approval authority) reviewed the rates and quantities quoted by all three bidders and found that the rates quoted by the bidders are competitive and rational and that Rs.9,450 was the latest purchase rate by LSCO and PESCO for LT TOU meters and therefore, accepted all three bids after allocating the quantity of meters equally among the undertakings/bidders in terms of following:

Table 1

Name of bidder	Qty. bided	Qty. to be purchased	Unit Rate (Rs.)
SB Electronics	1200	1000	9,450
Syed Bhais	1200	1000	9,450
Creative Electronics	1200	1000	9,450

IV. ISSUE

16. Whether the Undertakings have colluded to fix the price of LT TOU Meters in FESCO Tender, in violation of Section 4(2) (a) of the Act?
17. Whether the Undertakings have colluded to divide the share for supply of LT TOU Meters under FESCO Tender, in violation of Section 4(2)(b) of the Act?
18. Whether the Undertakings are involved in bid rigging in FESCO Tender, as prohibited under Section 4(2)(e) of the Act?

V. ANALYSIS

19. Agreements and arrangements made in respect of the production, supply, distribution of goods which have as their object or effect to prevent, reduce, restrict or distort competition within the relevant market are representative of restrictive practices explicitly proscribed under Section 4 of the Act, reproduced here:

4. Prohibited Agreements.-(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have their object or effect of

preventing, restricting or reducing competition within the relevant market unless exempted under section 5 of this Ordinance.

(2) Such agreements include, but are not limited to-

- (a) Fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service;
- (b) Dividing or sharing the markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;
- (e) Collusive tendering or bidding for sale, purchase or procurement of any goods or service.

20. After perusing the relevant facts and evidence, it becomes obvious that identical rate and quantity was submitted in bid documents by all the bidders in terms of following:

Table 2

Bidder/manufacturer	Description of material	Quantity required by FESCO	Quantity offered by the Bidder	Rate per unit quoted (Rs.)	Total price quoted (Rs.)
SB Electronics	LT-TOU Meters	3000	1200	9,450	11,340,000
Syed Bhais	LT-TOU Meters	3000	1200	9,450	11,340,000
Creative Electronics	LT-TOU Meters	3000	1200	9,450	11,340,000

21. Procuring agencies including Ministry or office of the Federal Government, any authority, corporation, body or organization established by or under a Federal law are required to procure goods under the confines of Public Procurement Rules, 2004. The said Rules clearly specify that bids documents are to be submitted in a sealed package to maintain the confidentiality as to the contents of the bid.

Submission of bids:

- (1) The bids shall be submitted in a sealed package or packages in such manner that the contents are fully enclosed and cannot be known until duly opened.

It is not possible to say that it was mere a co-incidence that Undertakings/bidders quoted identical rate and offered same quantity of the required material to be procured. Such procurements are subject to Public Procurement Rules 2004 that specifically require bidders to submit bids in a sealed package in such a manner that contents are fully enclosed and cannot be known until duly opened. Identical bids by all bidders is impractical until and unless the bidders share the bidding strategy.

22. Submission of identical rate i.e. Rs.9,450 per unit and same quantity of meters i.e. 1200 meter by each bidder/manufacturer is a direct evidence to share information among bidders and , *prima facie*, shows collusive intention of the bidders to fix the price of LT TOU meters and divide the quantity of required meters among themselves in equal trench of 1200 meters per manufacturer in contravention of Section 4(2)(a), (b) & (e) of the Act.
23. The Enquiry Committee called for information from three (03) Undertakings engaged in the supply of LT TOU meters namely Syed Bhais, KBK and Creative vide its letter No 14/FESCO/CMTA/CCP/2010 dated 05 August 2010 to substantiate the above mentioned anti-competitive behavior of the Undertakings. Following information was sought from the Undertakings:
 - Installed capacity and utilized capacity for LT TOU meters at the time of bid for the above mentioned tender.
 - Number of bids participated for supply of LT TOU meters in 2009: and
 - List of associated companies if any
24. Almost identical response was sent by Creative Electronics, Syed Bhais and KBK Electronics respectively stating that:

The LT TOU meters, HT TOU meters and 3-Phase whole current meters are having little difference among their components,

functions, testing, software and hardware etc. as such installed and utilized capacity of only LT (TOU) meters cannot be defined /determined.

LT TOU energy meters are part of family of three phase energy meters and capacity as such cannot be determined. Based on our past experience of market requirement, we buy components i.e., electronic microprocessors, DSP chips and other electric components for manufacture of these specialized meters in lots of 2/5000. as these components have long ordering cycle and the demand from PEPCO/ DISCO's is sporadic throughout the year our decision to bid ids based our stock level , quantity required in a new bid and orders in hand etc.

LT TOU meters are not standard/regular production item as the total demand in the country is very small (approximately 6000-7000 meters per year). Special production arrangements are made when an order is received, as such; there is no fixed installed capacity for this item.

25. After perusing the contents of replies sent by the Undertakings, it appears that LT TOU meters belong to family of 3-phase meters. These meters can be manufactured with minor modifications in components, functions, software and hardware. Therefore, it should not be a difficult task for any of the Undertakings involved to fulfill the major quantity requirement of tender for LT TOU meters if total quantity is not possible. However, it has been observed that none of the Undertakings has quoted a major quantity in its FESCO BID documents instead 40% of total quantity has been quoted by each bidder which in itself is, *prima facie*, evidence to collude to divide the quantity of tender meters.

26. Undertaking are blowing hot and cold at the same time. On one hand they have taken the stance that capacity for LT TOU meters cannot be determined and then they also admit that components for manufacture of these specialized meters are bought depending on the demand from PEPCO/ DISCO's throughout the year. It also appears to be an attempt to show that the capacity is less or underutilized. Whereas all three Undertakings are involved in manufacturing of high tech equipment and claim to be profitable, competitive and efficient having invested in diverse portfolio as shown on their respective websites. Same reply that the capacity cannot be determined makes it further dubious that companies might

have colluded, in particular, when all of the three companies offered the same quantity for identical price in the bid documents.

27. On 09 May 2011 another letter was sent by the Commission to Undertakings and also to M/s Pak Electron Limited and M/s Micro Tech Industries (Pvt) Limited who obtained tender documents but did not participate in the FESCO Bid to provide information on the following:

- Number of bids Participated for supply of LT TOU meters in 2008, 2009 and 2010 with details of procuring agencies.
- Quantity quoted and supplied in each tender.
- Price quoted and also the final prices of on which contracts were awarded
- List of associated companies if any.

M/s Pak Electron Limited and M/s Micro Tech Industries (Pvt) Limited were also required to give reasons/justifications for not participating in the tender.

28. Replies received from Undertakings and M/s Pak Electron Limited and M/s Micro Tech Industries (Pvt) Limited reveal the following picture in respect of bids participated for supply of LT TOU meters in 2008, 2009 and 2010 to different DISCOs.

Table 3

	HESCO	LESCO	FESCO	MEPCO	GEPCO	IESCO	QESCO	PESCO
Year 2008	Year 2008	Year 2008	Year 2008	Year 2008	Year 2008	Year 2008	Year 2008	Year 2008
Company	KBK 10800/800	Micro Tech 10600/600 KBK 9200/1100 Syed Bhais 10595/1234	Pak Electron 10600/500	Micro Tech 9340/1800 Pak Electron 9250/950 Syed Bhais 9250/3000			Syed Bhais 9450/500	Creative 10600/900 Pak Electron 10630/500
Quoted Price/ Quoted quantity								
Year 2009	Year 2009	Year 2009	Year 2009	Year 2009	Year 2009	Year 2009	Year 2009	Year 2009
Company	KBK 9100/1000	Creative 9465/500 Pak Electron 9500/500	Creative 10500/1000* Creative 9450/1000 Syed Bhais 9450/3000 KBK 9450/1200			KBK 9000/1000	Pak Electron 10000/600	
Quoted Price/ Quoted quantity								
Year 2010	Year 2010	Year 2010	Year 2010	Year 2010	Year 2010	Year 2010	Year 2010	Year 2010
Company		Creative 10400/750 Micro Tech 10400/700 Pak Electron 10400/700 KBK 9450/700	Pak Electron 9450/700	Creative 9450/2000 KBK 10400/700	Syed Bhais 10450/2000 KBK 10400/1000	Syed Bhais 9450/1000 Pak Electron 9450/500	Creative 9450/700	Micro Tech 10450/1000
Quoted Price/ Quoted quantity								

29. After perusing the contents and the facts of replies provided by the companies it emerges that the Undertakings furnished false information to the Commission. Table 3 which is based on the information submitted by the Undertakings, shows that Creative quoted 1000 meters, Syed Bhais quoted 3000 meters and KBK quoted 1200 meters for FESCO Bid. However, in reality all three Undertakings

quoted identical quantity of meters i.e. 1200 meter in FESCO Tender called in 2009 as is shown in Table 2 above.

30. It is also important to note that none of the Undertakings had quoted the price of Rs.9,450 for any of the tenders participated for supply of LT TOU meters during the year 2009 except the FESCO Tender. The only possible justification that identical price of Rs.9,450 was the currently prevailing price for LT TOU meter has no leg to stand on. If prevailing or latest price for LT TOU meters was Rs.9,450 then there was probability that the Undertakings had also quoted the same price in their tenders to other DISCOs in 2009. Whereas less price was quoted by KBK in other tenders in 2009 as is shown in Table 3. Further, even if assumed that Rs. 9450/- was the latest purchase rate of LT TOU meters by other DISCOs, it is still not acceptable to common sense that each of the Undertakings quoted price on the same faith of prevailing/latest price. This in fact is a clear evidence that none of the Undertakings was willing to compete and quote a competitive price and therefore, a common arrangement by the Undertaking was made to participate the FESCO BID.
31. We also observe that the information provided by the Undertakings does not correspond to information provided by them earlier. Syed Bhais in its letter dated 09 August 2010 submitted that it participated in 04 bids for supply of LT TOU meters during 2009. However, its letter dated 12 May 2011 shows that it has actually participated in 03 bids. Similarly in the case of KBK actually participated bids are 03 whereas in its letter dated 11 August 2010 it has submitted that number of bids participated for LT TOU meters are 05 in the year 2009.
32. In reply to Commission's letter seeking reasons/justification for not participating in the tenders, M/s Pak Electron Limited commented that tenders for which they obtained documents but did not participate were mainly because of factory loading, overlapping delivery schedule, non- arrangement of bid bond, non-availability of imported components and raw material etc.. On the other hand M/s

Micro Tech Industries (Pvt) Limited replied that “we have almost participated in all tenders in which we obtained the tender documents.”

33. The Enquiry Officer also sent a letter to FESCO on 09 May 2011 requiring the following provision of information in respect of procurement of LT TOU meters in the year 2008, 2009 and 2010:

- Number of tenders called for procurement of LT TOU Meters in each year;
- Quantity of LT TOU Meters required in each tender;
- Particular of parties obtaining tender documents in tenders;
- Name of parties submitting the bids;
- Name of successful bidders;
- Final price on which contracts were awarded; and
- Quantities supplied by each bidder.

The requested information was not furnished by FESCO till 18 May, 2011, therefore, a reminder was sent to FESCO on the same day. However, despite a reminder no response was received from FESCO on the above mentioned information and a second reminder was sent to FESCO on 31 May, 2011. Finally, FESCO provided information vide its letter dated 04 June, 2011. To our utmost surprise, details provided by FESCO for its tenders called in 2008 and 2010 are entirely different from the information submitted by the Undertakings regarding their participation in LT TOU meters tenders invited by FESCO in 2008 and 2010.

34. On the basis of information and documents available on record a, *prima facie*, collusive arrangement among the Undertakings by offering a pre-determined price and quantity is substantiated. Bids submitted by all the three Undertakings/bidders appear to have the object of preventing, reducing, restricting or distorting competition in the market of public procurement of LT TOU Meters. Therefore it is concluded that undertakings have entered into an arrangement that, *prima facie*, violates Section 4 (2)(a), (b) & (e) of the Act.

VI. Findings

35. In view of foregoing, Undertakings appear to fix the price of LT TOU Meters procured under the FESCO Tender deliberately and have, *prima facie*, violated Section 4(2)(a) of the Act;
36. In view of foregoing, Undertakings appear to have colluded to divide the share of supply of LT TOU Meters among themselves under the FESCO Tender and have, *prima facie*, violated Section 4 (2)(b) of the Act;
37. In view of foregoing, it appears that there is, *prima facie*, collusive bidding in the FESCO Tender in violation of Section 4(2)(e) of the Act.

VII. Recommendation

38. Section 4 of the Act mandates the Commission to look into possibilities of bid rigging- a particular form of collusive behavior of price fixing and/or dividing the market by which firms coordinate their bids on public procurement by raising prices to uncompetitive levels. The procurement made by the public sector organizations, is single largest segment of the economy affected by anticompetitive bidding and such anticompetitive behavior, in turn, causes huge losses to public sector organization. In the instant case possibility of bid rigging may have resulted in economic harm to FESCO seeking the bids, and to the public, who ultimately bear the costs as taxpayers or consumers.

39. In view of above, it is therefore, recommended that it is in the public interest to initiate proceedings against all three Undertakings/bidders under section 30 of the Act.

Shaista Bano
Director (C&TA)

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Nadia Nabi
Joint Director (C&TA)