

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF ALLEGED BID RIGGING IN THE TENDERS ISSUED BY
POWER DISTRIBUTION COMPANIES FOR THE PROCUREMENT OF LINE
HARDWARE MATERIAL**

Qasim Khan | Irfan ul Haq

Dated: June 08, 2020

1. This report is prepared pursuant to the enquiry authorized under Section 37 (2) of the Competition Act, 2010 (the “Act”) against alleged collusive bidding by the suppliers of electric transmission line hardware¹ material.

BACKGROUND

Grounds for Search and Inspection:

2. Prior to the enquiry, an informant shared bidding information relating to procurement of line hardware material by various Power Distribution Companies (the ‘DISCOs’), alleging collusive behavior between several participants.
3. Bidding data provided by the informant was concerning tenders issued by Hyderabad Electric Supply Company Limited (**HESCO**), Multan Electric supply Company Limited (**MEPCO**) and Tribal Area Electricity Supply Company (**TESCO**).
4. Examination of MEPCO tenders numbered, 16,17,28,31 and 32 (opening date: September 11, 2017) TESCO tenders (opening date: September 11, 2017) and HESCO Tenders No. 1222, 1225, 1226, 1228, revealed that in all these tenders most participants quoted identical or almost identical rates. Furthermore where the rate quoted by the winning party was identical to others, even the quantities supplied were divided among them. An example of the Bidding pattern identified above is found in the following example from one of MEPCO’s tenders:

MEPCO

Hardware material (Tender No. 16) opened on September 11, 2017

Sr. No.	Name of Firm	Knee Bracing Qty: 9000 No.		Steel Cross Arm DFM QTY: 8000 No.		Square Washer Qty: 100000 No.		GI Thimble Qty: 22000 No.	
		T/Rate (Rs.)	Off: Qty:	T/Rate (Rs.)	Off: Qty:	T/Rate (Rs.)	Off: Qty:	T/Rate (Rs.)	Off: Qty:

¹ components used in transmission lines for electricity transmission

1	M/s Climate Engineering	-		<u>1850.00</u>	<u>4000</u>	-		-	
2	M/s A.M Associates	-		<u>1850.00</u>	<u>2000</u>	-		-	
3	M/s. Malik and Sons	-		<u>1850.00</u>	<u>2000</u>	-		-	
4	M/s. Spleen Manufacturing	-		2075.00	8000	23.00	100000	-	

11KV dropout cutout (Tender No. 28) opened on September 11, 2017

Sr. No	Name of Firm	D-Fuse fittings (10000 No.)	
		T/Rate(Rs.)	Off Qty (No.)
1.	M/s Umair Industries	<u>5610</u>	<u>5000</u>
2.	M/s Malik & Sons	<u>5610</u>	<u>5000</u>
3.	M/s Naeem &Co.	5600	<u>5000</u>

More such examples of procurement by the three DISCOs whose bidding information was shared by the informant have been attached as **Annex A**.

5. Bidding patterns and the manner of tender allocation, as provided above, raised suspicion of coordinated behavior between various participants.
6. Subsequently an enquiry was authorized under Section 37(2) of the Act, read with Regulation 58 of the Competition Commission (General Enforcement) Regulations, 2007 (General Enforcement Regulations), and the following officers were appointed to investigate the matter for any possible contravention of the Act, and submit a report in this regard: **Syed Umair Javed, Director C&TA (currently on deputation)**, Qasim Khan, then Deputy Director (C&TA) now Joint Director (C&TA) and Irfan ul Haq, Deputy Director (C&TA) (the "Enquiry Committee").
7. In view of the above, letters were sent to Gujranwala Electric Supply Company (GEPCO), Lahore Electric Supply, Company (LESCO), Islamabad Electric Supply Company (IESCO), Faisalabad Electric Supply Company (FESCO), Hyderabad Electric Supply Company (HESCO), Multan

Electric Supply Company (MEPCO), Peshawar Electric Supply Company (PESCO) and Quetta Electric Supply Company (QESCO) on January 24, 2018 for provision of information regarding detail of bidders, bid amount, winning party information of line hardware items for a period of last three (03) years - **Annex B** . One DISCO - Tribal Areas Electric Supply Company (TESCO), was sent letter for provision of information on a later date **Annex C**.

Replies received from DISCOs

8. From the scrutiny of the bidding documents received from DISCOs, several instances were noted where bidders quoted identical or nearly identical rates, not just in one DISCO but across all. Also instances were noted in various tenders where several suppliers purchased bidding documents but only one participated, despite the former having credentials as evident from its participation in other tenders.
9. Similarly bidding patterns were noted suggesting winning parties taking turns across lots and tenders. Such patterns raised suspicion of not only bid suppression but also bid rotation, so as to achieve some sort of market sharing between the various suppliers of line hardware. DISCO wise bidding details gathered from each DISCO and suspicious activities identified therein are as under:

Peshawar Electric Supply Company (PESCO)

10. Bidding details (bidders, bid amount, name of winning party) of 35 tenders (**Annex D**) pertaining mostly to line hardware items was provided for the years 2015-16, 2016-17 and 2017-18.
11. Identical or nearly identical rates and quantity sharing arousing suspicion of coordinated action was noted in tenders: 2015-16/29(LOT I, II) for 11KV Steel Cross Arms, 2015-16/30 (LOT I, II) for 11KV Steel Cross Arms D- Fitting, 2015-16/31 (LOT I, II) for 11KV Steel Pin for Steel Cross Arms, 2015-16/34 for Single Structure Platform, 2015-16/35 for Double Structure Platform, 2015-16/37 (LOT I,II) for D- Shackly Assembly, 2015-16/38(LOT I, II) for Earth Rods, 2015-16/42 DE Clamps, 2015-16/45 for Nut and Bolt, 2015-16/44 for DA Bolts, 2016-17/36 for Double Structure Platform, 2016-17/33 for 11KV Steel Cross Arms, 2017-18/45 for 11KV Steel Pin for Steel Cross Arms, 2017-18/50 for Earth Rods, 2017-18/56 for DA Bolts, 2017-18/57 for Nut and Bolts, 2017-18/59 for PG Connector. (Bidding details attached as **Annex E**)
12. In the mentioned tenders, bidders that quoted the same price included: AM Associates, AH Associates, Kamran, Ajmer Engineering, Malik Enterprises, Shahbaz Engineering, Malik & Sons,

Creative, Climate Engineering, Naeem & CO, Sufi Steel, Process Dynamic, Umair industries, Bajwa Engineering, A.H Associates, Ilyas Engineering, FICO HI Tech, Creative Engineering, Worldover, Bajwa Engineering, Javed Enterprises, Murtaza Engineers, Energy Solution, KS Traders, Black Steel, United Engineering. In addition patterns of possible bid rotation and suppression were also noted. Examples of both suspected instances are provided in the following tables respectively:

S. No	Name Of Manufacturer	Item Description	Tender No	Price of Bid	Tender Qty	Winning party	Rate per Unit W/O Gst	QTY purchased	Total price W/O GST
1	A.M associates	11kv Steel Cross Arms	2015-16/29(L OI-I)	3180	27686	A.M associates	3172	3460	10975120
	Climate Engg			N.P			-		
	Lion Steel			N.P			-		
	Sarah Naeem & CO			N.P			-		
	A.H associates			3180		A.H associates	3172	3460	10975120
	Kamran			3180		Kamran	3172	3460	10975120
	Ajmer Engg			3180		Ajmer Engg	3172	3460	10975120
	Sufi Steel			N.P			-		
	Malik Ent			3180		Malik Ent	3172	3460	10994152
	Shahbaz Engg			3180		Shahbaz Engg	3172	3460	10975120
	PECO			N.P			-		
	Malik & Sons			3180		Malik & sons	3172	3460	10975120
Creative	3180	Creative	3172	3460	10975120				
2	A.M associates	11kv Steel Cross Arms	2015-16/29(L OI-II)	N.P	27685				
	Climate Engg			3180		Climate Engg	3172	6921	19955052
	Lion Steel			N.P					
	Naeem & CO			3180		Naeem & CO	3172	6921	21953412
	A.H associates			N.P					
	Kamran			N.P					
	Ajmer Engg			N.P					

	Sufi Steel			3180		Sufi Steel	3172	6921	21953412
	Malik Ent			N.P					
	Shahbaz Engg			N.P					
	Malik & Sons			N.P					
	PECO			N.P					
	Creative			N.P					
	Process Dynamic			3180		Process Dynamic	3172	6921	21956584
3	A.M associates	11kv Steel Cross Arms for D-Fitting	2015-16/30 (LOT-I)	N.P	6005				
	Ajmer Engg			2120		Ajmer Engg	2113	2002	4230226
	Sufi Steel			2120		Sufi Steel	2113	2002	4230226
	Malik Ent			N.P				-	
	Process Dynamic			N.P				-	
	Malik & Sons			2120		Malik & sons	2113	2001	4228113
4	Naeem & CO	11kv Steel Cross Arms for D-Fitting	2015-16/30 (LOT-II)	N.P	6000				
	Ajmer Engg			N.P					
	Sufi Steel			N.P					
	Process Dynamic			N.P					
	Umair Industries			2130		Umair Industries	2113	6000	12678000
	Malik & Sons			2135					
5	Bajwa Engg	11kv Steel pin for Steel Cross Arms	2015-16/31 (Lot-I)	348	65054	Bajwa Engg	348	13010	4527480
	Naeem & CO			N.P					
	A.H associates			348		A.H associates	348	13011	4527828
	Kamran			348		Kamran	348	13011	4527828
	Ajmer Engg			348		Ajmer Engg	348	13011	4527828
	Ilyas Eng			348		Ilyas Eng	348	13011	4527828
	Naeem & CO	11kv Steel pin	2015-16/31	348	65054	Naeem & CO	348	32527	11319396

6	A.M associates	for Steel Cross Arms	(LOT-II)	348	A.M associates	348	32527	11319396
	Kamran			N.P				

Possible Instances of bid rotation/suppression in PESCO tenders

S.No	Manufacturer	Item	Tender No	Price of bids offered by each	Tender Quantity	Winning Party	Rate per unit w/o GST	Quantity Purchased	Total price w/o GST
01	AM Associates United Engg Bajwa Engg Ajmer Engg Umair Industries Malik & Sons KS Traders Climate Engg	Nut & Bolt 10*5/8	2015-16/45	Only Umair Industries Participated and offered 75	38991	Umair Industries	73	38991	2846343
2	AM Associates United Engg Bajwa Engg Ajmer Engg Umair Industries Malik & Sons KS Traders Climate Engg	Nut & Bolt 12*5/8	2015-6/45	Only Malik & Sons participated and quoted 80	27730	Malik & Sons	80	27730	2218400
3	AM Associates United Engg Bajwa Engg Ajmer Engg Umair Industries Malik & Sons KS Traders Climate Engg	Nut & Bolt 14*5/8	2015-16/45	Only KS Trader participated and quoted 90	30341	KS Traders	85	30341	2578985

Multan Electric Supply Company (MEPCO)

13. MEPCO vide its letters dated March 21, 2018 and September 6, 2019, submitted details of several tenders (attached as **Annex F**) issued between 2015-2018 comprising the following Line Hardware Items.

- i. Hardware for Lynx Conductor
- ii. Hardware for Rail Conductor
- iii. Hardware for Earth-wire
- iv. Hardware for Dog Conductor
- v. Steel Cross Arms
- vi. Square Washer
- vii. GI Thimble
- viii. Knee Bracing
- ix. Stay Rod
- x. Dropout Cutout
- xi. Deadend Clamps

14. Like PESCO, identical/nearly identical rates and what appeared to be sharing of bid quantity was noted. Tenders description and pertinent information pertaining to each is provided herein below:

- i. T/No. 16 opened on 09.08.2017
- ii. T/No. 27 opened 11.09.2017
- iii. T/No. 28 opened 11.09.2017
- iv. T/No. 31 opened on 12.09.2017
- v. T/No. 32 opened on 12.09.2017

Tender No. 16 opened on 09.08.2017				
Description	Tendered Quantity	Offered Rate (Rs)	Offered Quantity	Participating Firms
Knee bracing	9000	-	-	-
Steel Cross Arms for DFM	8000	1850	4000	M/s Climate Engg
		1850	2000	M/s A.M Associates
		1850	2000	M/s Malik & Sons
Square Washer	100000	23.00	100000	M/s Spleen Manufacturing
G.I Thimble	22000	-	-	-

Tender No. 27 opened on 11.09.2017		
Name of Firm	Stay Rod complete (28000 No)	
	T/Rate (Rs)	Off: Qty
Umair industries	<u>1600</u>	<u>14000</u>
Blacksteel Intl	<u>1605</u>	<u>14000</u>
Bajwa Engg	<u>1605</u>	<u>14000</u>

Tender No.28 11.09.2017		10000 No required		
Bidder	Item description	Bid Amount	Offered Quantity	Winning Party
Umair Industries	11 KV dropout cut out	<u>5610</u>	<u>5000</u>	Tender Scrapped
Malik & Sons		<u>5610</u>	<u>5000</u>	
Naeem & Co		<u>5610</u>	<u>5000</u>	

Tender No. 31 opened on 12.09.2017		
Name of Firm	11 kv Steel Cross Arms with Braces (QTY: 40000 No)	
	T/Rate (Rs)	Off: Qty
Sufi Steel Ind	<u>3400</u>	<u>20000</u>
Climate Engg	<u>3400</u>	<u>20000</u>
Khalifa Sons	<u>3400</u>	<u>20000</u>
A.M Associates	<u>3400</u>	<u>20000</u>
Lion Steel Inudstries	<u>3400</u>	<u>20000</u>

Tender No.32 opened on 12.09.2017								
Name of bidder	Deadend Clamp "OSP" Qty 6400 No		Deadend Clamp "Dog" Qty 25000 No		Deadend Clamp LC-10 Qty 25000 No		Deadend Clamp LC-16 Qty 6900 No	
	T/Rate (Rs)	Qty off	T/Rate (Rs)	Qty off	T/Rate (Rs)	Qty off	T/Rate (Rs)	Qty off
Climate Engg			<u>230</u>	<u>12500</u>				
Ajmer Engg	<u>590</u>	<u>3200</u>						
Khalifa Sons			<u>230</u>	<u>12500</u>				
Creative Engg	<u>593</u>	<u>3200</u>			<u>100</u>	<u>12500</u>		
Malik & Sons					<u>101</u>	<u>12500</u>	<u>115</u>	<u>6900</u>

Hyderabad Electric Supply Company (HESCO)

15. HESCO provided details of 24 tenders (attached as **Annex G**) issued between 2016 - 2018 for the procurement of following items.

- i. Double Structures Platform
- ii. HT Steel Structures
- iii. LT CT
- iv. Disc Insulator
- v. 11 KV Steel Cross Arms with braces
- vi. Single structure Platform
- vii. Eye Nut
- viii. Nut & Bolts
- ix. PG Connectors
- x. Dead End Clamps
- xi. LT Steel Structures
- xii. 11KV Disc Insulator
- xiii. Meter Security Box
- xiv. Dropout Cutout
- xv. Earthing Unit
- xvi. Stay ROD
- xvii. Double Axle Trolley

16. From the scrutiny of the bidding data, it is noted that the bidders in the tenders mentioned below, quoted same rates or with negligible difference creating suspicion of market sharing. The parties involved included: Ajmer Engineering, Malik Enterprises, Shahbaz Engineering, Malik and Sons, EAC Engineering, AM Associates, Naeem and Co., Process Dynamics, M/s. Uppal and Climate Engineering.

17. Tender description and suspicious bidding patterns for select tenders are provided below (details of all tenders in this regard are attached as **Annex H**)

- i. Tender 1189/17 for the procurement of 11KV Steel Cross Arms with Braces,
- ii. Tender 1225/17 for the procurement of Meter Security Box,
- iii. Tender 1226/17 for 11KV Dropout Cutout,
- iv. Tender 1230/17 for PG Connector,

v. Tender 1232/17 for the procurement of Double Axle Trolley

Description	Tender No.	Opened on	Firm whom tender issued	Participated Firm	Bid amount	Unit Rate	Ordered Qty
Double Axle Trolley	1232/17	05.10.2017	M/s Climate Engg Co Gujranwala				
			M/s Ajmer Engg Electric Works LHR				
			M/s Umair Ind SMC Pvt Ltd LHR				
			M/s Malik & Sons LHR				
			M/s Naeem & Co Pvt Ltd LHR	yes	275000	273000	25
			M/s Process Dynamics LHR	yes	275000	273000	25
11KV Steel Cross Arms with Braces	1189/17	07.06.2017	M/s Ajmer Electric Engg Works Pvt Ltd HYD				
			M/s Ajmer Engg Electric Works LHR	yes	3835	3175	5000
			M/s Malik Enterprises LHR	yes	3835	3175	5000
			M/s Al-Shams Engg Works, HYD				

Faisalabad Electric Supply Company (FESCO)

18. In response to the information sought vide letter dated January 24, 2018, February 27, 2018, March 15, 2018, April 18, 2018 and several telephonic reminders, FESCO through its letter dated March 29, 2018 and February 26, 2019 submitted the bidding detail of tenders issued by it during the period between May 2014 to February 2017 (attached as **Annex I**). From the scrutiny of the information it appeared that FESCO forwarded details of products that were not related. Despite several reminders, FESCO did not provide the relevant information. However from the details provided by FESCO in its earlier letter, it was noted that in the tender No. 82, Lot I for the purchase of cartridges (type A and C), two companies - Electrum and Waheed Naeem & Co. bid the same amount against type A and type C cartridges. Comparative bidding detail of the said tender is given hereunder.

Item	Quantity	SGWI		Electrum		Waheed Naeem & Co		Siddique Sons Engineering	Spleen Manufacturing
		Rate/Unit	Total	Rate/Unit	Total	Rate/unit	Total		

Cartridge Type A	4335	425	1842375	<u>370</u>	1603950	<u>370</u>	1603950	Not Participated	Not Participated
Mould for Above	380	6500	2470000	3800	1444000	3870	1470600		
Cartridge Type B	1618	475	768550	400	647200	430	695740		
Mould for above	101	6500	656500	3700	373700	3870	390870		
Cartridge Type C	883	425	375275	<u>370</u>	326710	<u>370</u>	326710		
Mould for above	76	6500	494000	3700	281200	3870	294120		
Total Lot I (Rs)		6606700		4676760		4781990			

Lahore Electric Supply Company (LESCO)

19. LESCO vide letter dated January 16, 2019 submitted the bidding detail of 23 tenders (attached as **Annex J**) issued between 2015-18 for procurement of following line hardware items.

- i. Steel Cross Arms
- ii. Single Pole Platform
- iii. Double Pole Platform
- iv. Stay Rod
- v. Earth Rod
- vi. Insulator Pins
- vii. D Shackle Assembly
- viii. Eye Nut
- ix. Anchor Shackle
- x. Knee Braces

20. From the scrutiny of the bidding data submitted by LESCO it is noted that in the tenders numbered 1615, 1710, 1733, 1728, and 1877 bidders quoted rates with insignificant or no difference. Rates with negligible difference gave the impression (attached as **Annex K**) that bids were placed in such manner to depict competition.

21. Bidders that were noted quoting rates in such manner included: Khalifa Sons Pvt. Limited, A.M Associates, Malik and Sons, Ajmer Engineering Electric Works, Shahbaz Engineering Works, A.M Associates, Sufi Steel, Ilyas Engineering Works, Climate Engineering, Kamran Engineering Enterprises, Umair Industries, and AH Associates. Bidding details of the relevant tenders are provided below.

11-KV Steel Cross Arms							
Year	Tender	Date	Firm	Total Offered	Per Unit Rate	Bid Amount	Winning Party
2015-16	1615	06.01.15	Khalifa Sons Pvt. Ltd.	11550	3185	36786750	Khalifa Sons Pvt. Ltd.
			A.M Associates	11550	3182	36752100	
			Malik and Sons	12500	3187	39837500	
2016-17	1710	15.09.15	Malik and Sons	13500	3176		Malik and Sons
			Ajmer Engg Electric Works	13300	3175		Ajmer Engg Electric Works
			Shahbaz Engg. Works	13200	3173		Shahbaz Engg. Works
			A.M associates	Tender purchased but did not submit the bid			
			Sufi Steel Industries				

2015-16	1733	24.08.15	Ajmer Engg Electric Works	2250	6330	14242500	
			A.M associates	2250	6282	14134500	A.M Associates
			Umair Industries	2250	6280	14130000	Umair Industries
			Ilyas Engg Works	Tender purchased but did not submit the bid			

Insulator Pins for Steel Cross Arms							
Year	Tender	Date	Firm	Total Offered	Per Unit Rate	Bid Amount	Winning Party
2016-17	1877	31.10.16	Ilyas Engg Works	50000	342	17100000	Climate Engg Co
			Climate Engg Co	50000	342	17100000	
			Kamran Engg. Enterprises	50000	348	17400000	
			A.M Associates	50000	349	17450000	
			Umair Industries	50000	342	17100000	
Malik and Sons	50000	350	17500000				

			Ajmer Engg Electric Works	Tender purchase but did not submit the bid			
			A.H Associates	Tender purchase but did not submit the bid			
			Malik and Sons	24750	348	8613000	Malik and Sons
2015-16	1728	21.08.15	Ajmer Engg Electric Works	24750	347	8588250	Ajmer Engg Electric Works
			Umair Industries	25000	349	8725000	Umair Industries
			Ilyas Engg Works	Tender purchase but did not submit the bid			

Gujranwala Electric Supply Company (GEPCO)

22. From information provided by GEPCO (**Annex K1**) it was noted that in the tender number 440/MM/2016-17 (LOT I & II) for the procurement of stay rod participating bidders quoted rates with insignificant difference. In the tender number 09/MM/2017-18 for the procurement of ACSR DOG, out of four (04) participating bidders, two (02) bidders quoted the same price. In the tender number 463/MM/2016-17 (LOT I & II) for the procurement of Double Structure Plate Form two participating bidders switched quotes between the lots. Bidding firms noted from the above tenders include: AM Associates, Climate Engineering, Ajmer Engineering, Usman Hi Tech, Steel Complex, KS Trading, Naeem & Co and New Age Cables. Comparative data of the discussed tenders is mentioned below.

23. A very glaring example of bid rotation is where we see one party making a winning quote in one lot of a tender, while the other party makes the same exact quote in another lot of the same exact item. Surprisingly the parties also switch the losing and winning quotes without even an iota of difference. This can be observed in the procurement of Double Structure Platform between Naeem and Co Lahore and KS trading Lahore. The same pattern is observed between Spleen Lahore and AM in the procurement of Stay Rods. The bidding pattern also raises suspicion of bid suppression, with only one to two parties quoting amidst 6-7 participants in both the lots of the said procurement.

Description	Tender No.	Tender Issued	Participant	Bid Amount	Rate/Unit	Winning Party
-------------	------------	---------------	-------------	------------	-----------	---------------

Stay Rod LOT-1	440/MM/16-17 07-09-16	Fico Hi Tech GRW				
		Spleen Lhr	Spleen Lhr	7970000	1594	Spleen Lhr
		Climate Engg.GRW				
		A.M associates				
		Sufi Steel Lhr				
		Khalifa Sons Pvt. Ltd.				

Stay Rod LOT-II	440/MM/16- 17 07-09-16	Fico Hi Tech GRW				
		Spleen Lhr				
		Climate Engg.GRW	Climate Engg.GRW	7975000	<u>1595</u>	
		A.M associates	A.M associates	7970000	<u>1594</u>	A.M associates
		Sufi Steel Lhr				
		Khalifa Sons Pvt. Ltd.				
ACSR DOG	09/MM/17-18 20-06-17	Steel Complex KHI	Steel Complex KHI	19800000	<u>99000</u>	
		Fast Cables Lhr	Fast Cables Lhr	19897000	99485	
		M/s Newage Cables Lhr	M/s Newage Cables Lhr	19800000	<u>99000</u>	
		Universal Metal Lhr A.H Associates Lhr	Universal Metal Lhr	18980000	94900	Universal Metal Lhr
Double Structure Plate Form Lot-1	463/MM/17- 18 20-09-16	K.S Trading Lhr	K.S Trading Lhr	7387500	<u>9850</u>	
		Naeem & Co Lhr	Naeem & Co Lhr	6817500	<u>9090</u>	Naeem & Co Lhr
		Malik Interpriser Lhr				
		City Steel Lhr				
		Umair Industries				
		Creative Engg.Lhr				
		Energy Solution Lhr	Energy Solution Lhr	7500000	10000	
Double Structure Plate Form Lot-II	463/MM/17- 18 20-09-16	A.H Associates Lhr				
		K.S Trading Lhr	K.S Trading Lhr	6817500	<u>9090</u>	K.S Trading Lhr
		Naeem & Co Lhr	Naeem & Co Lhr	7387500	<u>9850</u>	
		Malik Interpriser Lhr				
		City Steel Lhr				
		Umair Industries				
		Creative Engg.Lhr				
		Energy Solution Lhr				

Islamabad Electric Supply Company (IESCO)

24. IESCO in its reply vide letter dated December 26, 2018 submitted the bidding detail of tenders (attached as **Annex L**) issued for the procurement of line hardware for the period between 2015-18. Not unlike other tenders, patterns of identical bid amounts was noted in the following tenders:

- i. Tender number 30 for the procurement of 11KV Pins for Steel X-Arms

- ii. Tender number 36 for the procurement of Dead End Clamp for Dog
- iii. Tender number 95 for 11KV Drop Cutout
- iv. Tender number 157 for the procurement of Double Structure Platform
- v. Tender number 186 for the procurement of PG Connector T – 220
- vi. Tender number 293 for the procurement of 11KV Pins for Steel X-Arms
- vii. Tender number 294 for the purchase of single structure platforms
- viii. Tender number 196 for the procurement of Double Arming Bolt DA-20
- ix. Tender number 31 for the procurement of Dead End Clamp for Dog/Rabbit.
- x. Tender number 33 for the procurement of Stay Rod with Elbow and Thimbles
- xi. Tender number 63 for the procurement of 11 KV Steel Cross Arm
- xii. Tender number 64 for the procurement of Earth Rod 10
- xiii. Tender number 65 for the procurement of Double Structure Platforms
- xiv. Tender number 99 for the procurement of 11 KV Dropout Cutout
- xv. Tender number 118 for the procurement of Double Arming Bolt DA 22
- xvi. Tender number 119 for the procurement of D Shackle Assembly
- xvii. Tender number 145 for the purchase of earth rod
- xviii. Tender number 56 for the purchase of Single Structure Platform

25. Apart from the above, in the tender number 135 opened on 08 -11-2016 for nuts and bolts 03 bidders in three different lots quoted rates with 01 rupee difference. Similar pattern of bids was noted in tender No. 57 opened on 24-08-2016 for dead end clamps. From the above tenders bidders that were noted to be involved in suspicious bidding activity included: Climate Engineering Co., Mohsin Umer Pvt. Limited, Creative Engineering, WOSCO Lahore, Naeem & Co., Malik Enterprises, Worldover Suppliers, A.M Associates, Umair Industries Pvt. Limited, Creative Engineering, Khalifa Sons, Malik Sons, KS Traders. Bidding patterns for select tenders are being reproduced below, while complete details for all tenders are provided in **Annex M**.

TENDER NO 56 OPENED ON 24.08.2016			
Name of Firm	Lot No	Off Qty	Rate in Rs per unit on FCS basis without GST quoted by bidder
Naeem and Co Lahore	I	1000	6300
	II	1000	NQ
Malik Enterprises	I	1000	NQ
	II	1000	6300

TENDER NO. 57 OPENED ON 24.08.2016			
NAME OF FIRM	LOT	TENDER QTY	Rate in Rs per unit on FCS basis without GST quoted by bidder
AJMER Engg	I	7500	229
	II	7500	229
Umair Ind	I	7500	226
	II	7500	NQ
Climate Engg	I	7500	NQ
	II	7500	225

Tender No.	Date of opening	Description	Unit	QTY	Rate per unit	Bid Amount	Name of Bidder	Winning Party
64	22.09.17	Earth Rod 10 ft	No	15000	625	9375000	Ajmer Engg AM Associates	Ajmer Engg
			No	15000		9375000		AM Associates

Quetta Electric Supply Company (QESCO)

26. Details of the following procurement items was provided by QESCO for the period 2017-19.

Tender details provided by QESCO are attached as **Annex N**.

- i. DA Bolt
- ii. D Shackle Assembly
- iii. 11KV Pin for Steel X Arm
- iv. Nut and Bolts
- v. Stay Rod
- vi. PG Connector
- vii. Cross Arm
- viii. Nut and Bolt
- ix. 11KV X Arm
- x. Double Structure Platform
- xi. Single Structure Plate form
- xii. Dead End Clamp
- xiii. Meter Box

27. Comparative statement of a few tenders highlighting identical bid quotations is reproduced below. details of all tenders in this regard are attached as **Annex O**.

S.No	Tender No	Description	QTY	Unit	Javed Entt.Lhr	Al-Shams Engg. Hyd	Sana Engg. QTA	Black Steel Lhr	Mohsin Umer Lhr	Shahbaz Engg. Lhr					
1	T-117629.11.17	DA BOLT 12"	38000	Nos	N.Q	160	N.Q	N.Q	N.Q	160					
2		DA BOLT 24"	37000		169	N.Q	N.Q	N.Q	N.Q	160					
3		DA BOLT 20"	32200		N.Q	N.Q	210	210	N.Q	N.Q					
1	1173	D-Shackle Assembly	65500	Nos	Rabee 1 Steel	Pak Sons									
					122	122									
1	1174	11KV Pin for Steel X Arm	105000	Nos	Mohsin Umer Lhr	Umair Ind. Lhr	Al-Shams Engg. Hyd	Ajmer Engg. Hyd	Javed Entt. Lhr	Malik & Son Lhr	A.M Associate	Climate Engg. Lhr	Malik Entt. Lhr	Naeem & Co Lhr	K.S Traders Lhr
					348	348	348	348	348	348	348	348	348	348	348
1	1175	Nut & Bolts 5/8x2	18500	Nos	Bajwa Engg. Lhr	Al-Shams Engg. Hyd	Sana Engg. QTA	Black Steel Lhr	Murtaza Engg. Lhr	Ajmer Engg. Hyd					
						N.Q	32	32	32	N.Q	N.Q				
2		Nut & Bolts 5/8x9	65000	Nos	70	N.Q	N.Q	N.Q	70	70					
1	1172	Stay Rod	20000	Nos	Murtaza Engg. Lhr	Umair Ind. Lhr	Ajmer Engg. Hyd	Bajwa Engg. Lhr	Malik & Son Lhr	A.M Associate	Climate Engg. Lhr	Malik Entt.Lhr	Naeem & Co Lhr	K.S Traders Lhr	
					1650	1650	1650	1650	1650	1650	1650	1650	1650	1650	

Tribal Areas Electric Supply Company (TESCO)

28. TESCO submitted bidding details of 35 tenders (attached as **Annex P**) issued by it between 2016-19 for procurement of the following line hardware items.

- i. Pin Insulator
- ii. Disc Insulator
- iii. Spool Insulator
- iv. Stay wire
- v. 11KV Dropout cutout

- vi. Steel Cross Arm
- vii. Pin steel
- viii. D-shackle Assembly
- ix. Eye nut
- x. Stay rod
- xi. Earth rod
- xii. P.G Connector
- xiii. Single pole adda
- xiv. Double pole adda
- xv. Nutbolt
- xvi. DA bolt
- xvii. Pins for steel cross arms
- xviii. Tension clamps Dog/Rabbit
- xix. Double
- xx. Arming Bolt

29. From the scrutiny of the bidding detail provided by TESCO, against 14 tenders, two or more of the participating bidders were noticed to have quoted the same rates. In some other tenders, there were instances suggesting the possibility of the bidding being carried out with the intent of rotating the winning bidders across several tenders. Tenders where two or more bidders were noted to be quoting the same rates included: Tender No. 53(17.04.2018), 37(09-04-2018), 39(09-04-2018), 40(09-04-2018), 41(09-04-2018), 49(21-09-2016), 50 (21-09-2016), 55(22-11-2016), 60 (22-11-2016), 04 (20-07-2017), 05 (20-07-2017), 07(20-07-2017), 09(20-07-2017), 10(20-07-2017). Whereas the bidders involved were: Climate Engineering, Ajmeer Engineering, Malik & Sons, Umair Industries, Bajwa Engineering, United Engineering, Black Steel, Khalifa Sons, KS Traders, AM Associates, Lion Steel, Javed Enterprises, AH Associates, ABA Engineering, Malik Enterprises, Spleen, Naeem and Co. Comparative detail of a select few tenders is reproduced below, while detail of all tenders has been appended as **Annex Q**.

Description	Tender No	QTY	Bajwa Engg.	Climate Engg.	Ajmeer Engg.	Javed Ent.
Steel Cross Arms	53. 17.04.18	3278	N/Q	3350	3350	3188
Pin for Steel Cross Arms		6157	274	285	285	282

Description	Tender No	QTY	United Engg.	Climate Engg.	Bajwa Engg.	Black Steel
Steel Cross Arms	55.	3234	3100	3100	3100	3100
Pin Steel	22.11.16	5187	350	350	350	N.Q
Description	Tender No	QTY	United Engg.	Climate Engg.	Malik & Sons	
Drop Out Cut Out	60. 22.11.16	3600	5770	5750		5750

Search & Inspection (Impounding of Evidence)

30. From the examination of the information provided by each DISCO, it appeared that the bidders coordinated their individual bids, an action prohibited under the Act. Based on the recommendations of the Enquiry Committee, the Commission exercising its powers under Section 34 of the Act authorized two teams of officers to conduct ‘enter and search’ inspection of the premises of FICO hi-tech (Pvt.) Limited (FICO) and Climate Engineering Company (‘Climate’). On March 05, 2020 teams of officers duly authorized by the Commission conducted inspection of the office of:

- a. FICO hi-tech (Pvt.) Limited (FICO) located in Lahore and
- b. Climate Engineering Company (‘Climate’), Located in Gujranwala.

31. A number of documents including electronic data was impounded during the search and inspection. A copy of the authorization letter and inventory list of the impounded documents is attached as **Annex R** (FICO) and **Annex S** (Climate).

Relevant Market

32. For the purpose of defining relevant market under this enquiry, we refer to the relevant market as defined under Section 2(1)(k) of the Act.

“relevant market” means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers 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 homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;

33. In light of the above, relevant market consists of a relevant product market and a relevant geographic market.
34. Line hardware items are components used in transmission lines for electricity distribution. Process of procurement of line hardware items by DISCOs is carried out following the bidding process. Undertakings engaged in the supply of line hardware items are either registered or prequalified before the procurement. From the documents provided by DISCOs it appears that the procurement of the required items is carried out on the basis of specifications of WAPDA or PEPCO or the relevant DISCO.
35. The enquiry has highlighted multiple relevant markets. Each of the products procured by the DISCOS has its own characteristics, price and intended uses and procurement of each is subject to certain standards or specifications. Thus each of them comprises a distinct product market for the purpose of this enquiry.
36. The relevant product market for the purpose of this enquiry is therefore a cluster of distinct product markets represented by roughly 50 line hardware items/products (attached as **Annex T**).
37. Since DISCOs that procure the above listed line hardware products serve the entire area of Pakistan, and suppliers of line hardware are subjected to same rules and regulations in contesting for any given tender by a DISCO, the relevant geographic market for the purpose of this enquiry is the whole territory of Pakistan being served by power distribution companies.
38. Having identified the relevant market, it may be important to note that unlike an 'abuse of dominance' contravention covered under Section 3 of the Act, where defining a relevant market accurately is of utmost significance or instrumental in finding a violation, examination of price fixing or bid rigging arrangements dealt with under Section 4 of the Act does not hinge on definition of the relevant market to anywhere near that extent.

Undertakings

39. Section 2(1) (q) of the Act defines an undertaking as follows:

“undertaking” means any natural or legal person, governmental body 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 or control of services and shall include an association or undertaking”.

DISCOs

40. Islamabad Electric Supply Company Limited (IESCO), Lahore Electric Supply Company Limited (LESCO), Gujranwala Electric Supply Company Limited (GEPCO), Hyderabad Electric Supply Company Limited (HESCO), Quetta Electric Supply Company Limited (QESCO), Faisalabad Electric Supply Company Limited (FESCO), Peshawar Electric Supply Company Limited (PESCO), Multan Electric Power Company (MEPCO), Tribal Electric Supply Company (TESCO) being involved in the economic activity of procuring line hardware items for onward function of supply and distribution of electricity in their respective jurisdictions are undertakings in terms of Section 2(1)q of the Act.

Line Hardware Suppliers

41. Suppliers of Line Hardware (list attached as **Annex U**) being involved in the supply and distribution of various line hardware items/products are undertakings in terms of Section 2(1)(q) of the Act.

Manufacturers and Contractors’ Association

42. Manufacturers and Contractors’ Association being an association of undertakings (Line Hardware Suppliers) is an undertaking in terms of Section 2(1)(q) of the Act.

Analysis

Importance of Public Procurement and Bid Rigging

43. Before proceeding with the analysis, we find it of significance, to discuss various facts that identify the importance of public procurement in any country's overall economic progress, and how bid rigging can have an adverse effect on a procuring agency that runs on national exchequer, and the consumers that are found further down the chain. This implies that any rigging that takes place in public tenders, can negatively impact a country's economy, in addition to being a threat to the overall public interest.

Bid rigging

44. Bid rigging is defined by Organization for Economic Cooperation and Development (OECD) as:
*'bidders agree among themselves to eliminate competition in the procurement process, thereby raising prices, lowering quality and/or restricting supply'*².
45. Among the most common forms of bid rigging is coordination among the bidders/competitors in terms of fixing the price or allocation of quantities to be supplied. Bid rigging increases the price borne by the taxpayers for public projects, creating economic inefficiency. When bid rigging takes place in public procurement, the governments often end up paying prices above market value, to the detriment of taxpayer's (consumer) interest.
46. According to OECD, developing countries spend more than 15 percent of their GDP on public procurement. With such a large public procurement volume, it is extremely crucial to protect against anti-competitive behavior. If the mentioned estimate is applied to Pakistan, where GDP, in 2018, was US\$ 314,588 million³ (US\$ 314.6 billion). This would approximate to an annual public procurement expenditure of US\$ 47.1 billion.

² OECD, Fighting bid rigging in public procurement
<https://www.oecd.org/daf/competition/Fighting-bid-rigging-in-public-procurement-2016-implementation-report.pdf>

³ <https://countryeconomy.com/gdp/pakistan>

47. Estimates of wastage in the procurement amount vary from 30 percent to 60 percent⁴. Even if wastage as low as 10% is considered would amount to a loss of US\$ 4.7 billion annually to national exchequer.
48. Specifically in the case of DISCOs, public procurement of line hardware products has amounted to more than **PKR 5 billion** between the period 2015-2018.
49. Having addressed the above, we now move forward to carry out the analysis of the evidence impounded and find out if that suggests any coordination among line hardware suppliers, in the DISCOs issued tenders.
50. The Act prohibits any agreement or decision by an association which may have the object and effect of restricting, distorting or preventing competition within the relevant market and in terms of the non-exhaustive list of provisions provided for under Section 4(2) of the Act. The term “agreement” is defined in the Act as *including any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable*. The application of Section 4 of the Act is therefore not limited to formal legal contracts, but also includes agreements cooperation and/or arrangements achieved through informal agreements, understandings, circulars or practices. Relevant provision of the Act with regard to arrangements involving bid rigging is reproduced hereunder:

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 the Act.

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

(e) Collusive tendering or bidding for sale, purchase or procurement of any goods or service.

Prima Facie Collusive activities by the suppliers of line hardware equipment

52. Scrutiny of the documents impounded from Climate’s office indicate existence of an association of line hardware suppliers by the name of Manufacturers and Contractors Association (‘MCA’).

⁴ <https://www.thenews.com.pk/print/357044-60-billion>

53. The most glaring evidence of coordinated action between members of the aforementioned association is found in the following extract of standard operating procedures (SOPs) agreed between the association and its members with regard to tenders floated by Distribution Companies:

MCA SOPs for members, soft copy file dated 29-07-2018 - Annex V

SOP FOR DOCO

- 1. No share will be given for advance prototype. Valid prototype is required for getting share.*
- 2. If the prototype of a member expires than the share of that member will remain intact for 12 months. After 12 months, if the prototype is not approved, the share will not be allocated to that member*
- 3. Double firms will get share @ 1.40%. The double firms are:
EAC, Naeem & Company and Ajmir.*
- 4. At the time of distribution of share all the firms will be considered one and the double firms will also get share @ 1%. While 0.40% will be distributed among the double firms after all the single firms have got shares.*
- 5. The share will be distributed purely on merit and the lowest firms will be allocated tenders first. All members will have to participate in all Discos as per association decision and no preference will be given to any member for a particular Disco. The members will not pressurize the president for a particular Disco.*
- 6. One representative from each firm must participate in the association meeting and try to adhere to meeting timing*
- 7. The association fee of Rs.25000/- should be paid and it is a prerequisite for getting share.*
- 8. The meeting will be arranged at least one week before the opening date of the tender and only those firms will issue the tender from Disco who has been allocated shares and other firms will surrender their original tender documents to the President.*
- 9. The president decision in tender allocation will be final and all will respect & adhere to it in its true letter and spirit.*
- 10. If a member breaches the decision of the association and violates the tender allocation of the association than the surety money submitted in shape of Cheque by that particular member will be en-cashed by the association.*
- 11. At the time of allocation of share to the member the variation more or less will not be more than 1000 DOCO.*
- 12. If the quantity of a tender is huge than all the member will do their best efforts to get the tender divided into lots and if lots are not made than all member will restrain from the tender as per association decision.*
- 13. For every tender there will be at least one supporting bid at high rate as per association decision.*

This SOP shall be binding upon every member of association and he will be obliged to comply / act upon this agreement in its true letter & spirit.

54. From the above listed SOPs, it is quite clear that there is a well thought out mechanism in place that influences the outcome of each and every tender floated by distribution companies, through

orchestration at the association's level and subsequent adherence by its members to the norms established therein. The key features of this mechanism involve:

- Sharing of procurement market by means of specified percentage for each of the firms, i.e. 1% for single firms and 1.4% for what is termed as double firms.
- Members are not free to bid in a tender of choosing but have to bid in all tenders floated by DISCOs.
- For any given tender, only the firms allocated shares will participate, while the remaining would have to surrender their tender documents to the Association's president.
- Every firm will have at least one representative in the association meetings that will be conducted at least a week before the opening of each tender.
- The president will be the final authority in deciding tender allocation.
- Any deviation from the agreement by any member would result in the encashment of the latter's surety money (cheque) by the association.
- For any large tenders, the members would make utmost effort to get the tender divided into lots, and if the same is not achieved, abstain from participation in such tender(s).
- There will be at least one supporting bid with a quote higher than the rest in each tender.

55. The aforementioned features, demonstrate that none of the firms that form a part of the association, in any way or shape, partake in DISCOs related tenders, but with the intention of rigging that market. It appears that each of the firm has a designated role in the whole process, such that they cooperate to share the market among each other as per laid out criteria. Decisions such as who will participate, who will submit a pre agreed high bid, how the market will be distributed among the participants are all decided at the association's forum, and any deviation from those set norms comes in the face of a heavy penalty.

56. Another document found by the Enquiry Committee lays out the rules of engagement for participation in tenders involving the procurement of a specific line hardware item called the Dropout Cutout. This forum is termed as a 'Dropout Cutout Consortium'. Whether this consortium is a separate cartel in addition to the overarching cartel mentioned above, or a sub cartel within it, is not clear, however much like the SOPs for tenders in general, the rules and regulations guiding the consortium affectively establish norms that are to be strictly followed by its members in their

tenders of relevance. The key features of these rules and regulations signed upon by 14 of the 17 cited firms, in a meeting held on 15-8-2016 are as follows:

Rules and Regulations of Dropout Cutout Consortium, dated 15-08-2016 - Annex W

Rules and Regulations of Dropout Cutout Consortium

A meeting held on 15-08-2016 in which unanimously decided that.

- 1. The President Zia-ul-Islam decision will be firm and final and should be honored and followed by all the members.*
- 2. If any member violate the decision of Forum and Quote the tender, the tendered full quantity will be added in his share either the member will get the quantity or not.*
- 3. The other member who will quote the tender with decision of the forum and win the tender then the tender quantity will be distributed in all other members except the member who violate the rules.*

<i>1. Khalifa Sons</i>	<i>9. Creative Engg</i>
<i>2. Naeem & Co</i>	<i>10. Vision Engg</i>
<i>3. Climate</i>	<i>11. FICO</i>
<i>4. United</i>	<i>12. A.H Associates</i>
<i>5. Malik & Sons</i>	<i>13. World Over</i>
<i>6. Umair Enterprises</i>	<i>14. Energy Solution</i>
<i>7. Ajmer Electrical</i>	<i>15. EAC</i>
<i>8. Ajmer Engg</i>	<i>16. Ace Indigo</i>
	<i>17. AIT</i>

57. Thus much like the previous SOPs, here too, we see that the president is the final authority on tender allocation. If a member participates and quotes in a tender without prior approval in the forum, it shall be treated as having been granted its share, whether it wins or not. In case it does not win, it will completely lose its share with the tender quantity to be now equally distributed between all participants. The foregoing, as it appears, indicate the existence of an organized cartel, deviation from which invites heavy penalty for the defector.

58. In addition to the foregoing, a look at the following piece of evidence indicates, that the market for line hardware material in Pakistan is rife with examples of industry players working in unison to divide the market among themselves, with the scope of such understanding varying from one agreement to another:

Agreement for joint venture, dated April 10, 2010, Annex X

Agreement for joint venture

This agreement made on 10th day of April 2010 between M/S Climate Engineering Gujranwala of the first part and Vision Engg Co, M/S Ajmer Engg, M/S khalifa & Sons, M/S Malik & Sons & Naeem & Co. of the second part.

Witness and it is hereby mutually agreed that the said parties executive Agreement of Joint Venture for participating in bidding documents no. QESCO Tender ABD-QESCO-07-2009 for the supply of distribution Line hardware materials due on 10th April 2010 on the following terms and conditions subject to acceptance of this agreement by the purchaser otherwise become null & void:-

The party of the first shall submit bid in its own name of the following items at mutually agreed rates with the party of second part which are detailed hereunder:-

Sr No	Description of Store	QTY	Consortium Share					
			M/S Climate Engineering Co.	Vision Engineering Co	M/S Ajmer Engineering	M/S khalifa & Sons	M/S Malik & Sons	Naeem & Co
1	Steel X Arms with braces	4550	1500	1000	1050	-	-	-
2	11 KV Pin Insulator	13650	2275	2275	2275	2275	2275	2275
3	Dead End Clamp for Dog	1152	800	-	-	-	150	202
4								

1. The contract if awarded, the same will be signed by party No. 1 and the parties shall join and accept liability for all obligations under the contract.
2. The items detailed above shall be supplied by the parties in accordance with the above share.
3. The parties shall be responsible individually for their share of profit/loss on all items in accordance with their share mentioned above.
4. The parties shall be individually responsible for advance payment guarantee and performance security.
5. The parties shall be responsible individually for their share of expenses, rates and taxes, Government levies and income tax etc.
6. The parties shall be punctually pay and discharge their debts and liabilities separately and shall keep the venture effectively indemnified against the same.
7. The parties shall arrange inspection of the material allocated them at their own works and deliver the same from their works to the consignee or dispatch if so desired by the purchaser.
8. The agreement will automatically revoke after completion of the said contract.
9. Any dispute or difference which may arise between parties or their representatives with regard to the construction, meaning and effect of this agreement, or any part thereof and any other matter relating to the joint venture shall be referred Arbitration Act of Pakistan.

10. The parties named above have set their respective hands in presence of the witness on this day of April 2010.

WITNESSES

1-Party of First Part

2- Party of Second Part

- A. M/S Climate Engineering Co.
- B. M/S Vision Engineering Co.
- C. M/S Ajmer Engineering,
- D. M/S khalifa & Sons
- E. M/S Malik & Sons
- F. Naeem & Co

59. Furthermore another document dated 14-09-2019, indicates the heavy reliance of various firms on the association, as there in, Mr. Raza ur Rehman (Association official) is being authorized to deal with day to day affairs of the firms mentioned therein.
60. Even though the nature of matters is not mentioned it indicates the heavy role of the association in the day to day affairs of firms, that as we have seen above, do not preclude issues of commercially sensitive nature.

Authority given by firms to president Raza ur Rehman to deal cases of members on various subjects, Annex Y

Ref : _____

Dated: 14.9.2019

Authority Letter

Mr. Raza ur Rehman s/o Muhammad Bashir having Cnic no _____ is hereby authorized by the undersigned to deal with day to day cases pertaining to various subject on behalf of firm _____.

For _____

Malik & Sons
Black Steel
Umair Ind
SHAHBAZ ENGG
Malik Enterprises
Mohsin Umer
Usman HiTech
Ilyas Engg Works
Kamran Engineering Enterprises
ABA Engineering
Ajmair Engg
Bajwa & Co
Climate Engg Co
Sana Engg
Murtaza Engg
Javed Engg

61. Scrutiny of the impounded evidence also indicates an arrangement between the various suppliers of line hardware to divide quantities and revenues among each other based on individual classification.
62. It is noted that the firms engaged in the supply of line hardware material are divided in three different groups – A, B & C with a total number 36 companies. Firms selected for supply of tender quantity are allotted share group wise and mainly on the basis of value assessed for each firm in a group. Firms of group A, B and C are allocated share according to the devised formula of 100%, 75% and 50%- 60% respectively. In case less or more share is allocated to a firm in one tender, the remaining is adjusted in new tenders.
63. A few relevant excerpts found from the impounded documents regarding division of shares are as under. Detailed documents in this regard have been attached as annexures.

Group division of members, soft copy file dated 10-02-2018 - Annex Z

<i>Group A</i>	<i>Group B</i>	<i>Group C</i>
<i>1. Naeem & Company</i>	<i>1. Malik Enterprise</i>	<i>1. Usman Hi-Tech</i>
<i>2. Khalifa & Sons</i>	<i>2. United Engineering Co.</i>	<i>2. FICO</i>
<i>3. K.S. Traders</i>	<i>3. Shahbaz Engineering</i>	<i>3. Ilyas</i>
<i>4. Umair Industry Pvt Ltd</i>	<i>4. Sana Engineering Co.</i>	<i>4. Murtaza</i>
<i>5. Black Steel Industry</i>	<i>5. Uppal Engineering Co.</i>	<i>5. Javeed</i>
<i>6. Malik & Sons</i>	<i>6. Sufi Steel Industry</i>	<i>6. Specialist Group</i>
<i>7. A.M Associates</i>	<i>7. P.D.L</i>	<i>7. WASCO</i>
<i>8. Kamar Engineering</i>	<i>8. Al- Shamas</i>	<i>8. Ajmer Electric</i>
<i>9. Climate Engineering Co.</i>	<i>9. Loin Steel Industry</i>	<i>9. Pakistan Sons</i>
<i>10. Ajmer Engineering Co.</i>	<i>10. Sadique Sons</i>	<i>10. Rabi</i>
<i>11. Spleen</i>		<i>11. Gujranwala Cables</i>
<i>12. Bajwa & Co.</i>		<i>12. National</i>
		<i>13. ABA</i>
		<i>14. Moshin Umer</i>

Share Distribution of firm's category wise and product wise, soft copy file dated 15-09-2018 - Annex ZA

Share Distribution in IESCO, MEPCO, GEPCO & PESCO			
Hardware			
<i>Sr #</i>	<i>Amount (Rs.)</i>	<i>Share</i>	<i>Per Head (Rs.)</i>
1	511,960,726	2,225	230,095
1	Share "A.M"	150%	34,514,206
2	Share "MS"	125%	28,761,839
3	Share "A"	100%	23,009,471
4	Share "B"	75%	17,257,103
5	Share "C"	50%	11,504,735
Nut & Bolts			
<i>Sr #</i>	<i>Amount</i>	<i>Share</i>	<i>Per Head</i>
1	80,183,805	15	5,345,587
Silver Hardware			
<i>Sr #</i>	<i>Amount</i>	<i>Share</i>	<i>Per Head</i>
1	126,513,750	10	12,651,375
Pin for SCA			
<i>Sr #</i>	<i>Amount</i>	<i>Share</i>	<i>Per Head</i>
1	125,875,115	13	9,682,701
Steel X Arms			
<i>Sr #</i>	<i>Amount</i>	<i>Share</i>	<i>Per Head</i>
1	637,868,000	1550%	41,152,774
1	Share "300"	300%	123,458,323
2	Share "175"	175%	72,017,355
3	Share "150"	150%	61,729,161
4	Share "100"	100%	41,152,774
5	Share "75"	75%	30,864,581

Share distribution among companies in ratios and categories of firms, undated document - Annex ZB

Companies with Category A **1**
Share of each company estimate Rs. 22,000,000
Companies with Category B **0.75**
Malik Enterprises
Khalifa & Sons-
KS Pvt
United Engg
Black Steel

Bajwa Industry
Shehbaz Engg
Kamran Engg
Vision Engg
Share of each company estimate Rs. 16,000,000
Companies with Category C **0.60**
Share of each company estimate Rs. 13,000,000

<u>Adjustment</u>	
<i>Naeem & Co</i>	<i>Rs. 4,800,000</i>
<i>Climate Engineering</i>	<i>Rs. 10,000,000</i>
<i>Black Steel</i>	<i>Rs. 8,000,000</i>
<i>Bajwa</i>	<i>Rs. 6,000,000</i>
<i>Ilyas</i>	<i>Rs. 1,000,000</i>

Documents of similar nature as above can be found attached as **Annex ZC**

64. From a note added in an email of September 10, 2015, between Gujranwala cables and what appears to be another undertaking, readjustment of tender allocation between vision engg and Naeem & co is discussed, such that if PESCO tender is ordered to Naeem & Co, it will instead be given to Vision Engg. This implies that each of the firms is guaranteed a share as per its classification without the pressure of competing in the market, and therefore, apparently, bidding is just a formality they carry out to create a semblance of competition in the market.

Email dated September 10, 2015 – Annex ZD

From: Akram A (akram.ams@gmail.com)
To: Khwaja Shahid (gujranwalacables@gmail.com),
Naeem_Co123 (naeem_co123@hotmail.com), Imran
Irshad (imrancreative1@gmail.com).

^

...

Note: Earth rod lot # ii of PESCO will be given to vision Engg if ordered to Naeem & Co, it will adjust in between both parties.

65. Similar instances are found elsewhere as reproduced below:

Document (undated) regarding share distribution attached as Annex ZE

Note: The share of Vision in Pesco which was taken by Wosco is given in Iesco
Note: The share of Fesco is divided as per already allocated

66. Then, there is the following evidence concerning a meeting of association wherein again division mechanism for quantity allocation was discussed for select products, among firms mentioned therein. It may be interesting to note, that firms may undergo a change in their classification and

by implication see a shift in their share allocation. The Relevant excerpt in this regard is as reproduced hereunder:

Minutes of meeting of association (undated), Annex ZF

PIN&STEEL X ARM equally divided on all manufacturers.

Nuts & bolts, PG Connectors & Deadend Clamp equally divided on all manufacturers. 1.75

In Hardware A.M share is 1.70% & Malik & Sons 1.50%.

Bajwa Engg & Kamran Engg & KS Traders category upgraded to A Class

67. From the above excerpts it appears that there is a *prima facie* collusive arrangement among the suppliers of line hardware in terms of allocation of tender, division of tender quantity and tender manipulation effected through decisions such as who will participate as against surrendering tender documents, who would place a higher bid and whether there will be a single winner or multiple winners with tender quantity divided among themselves as per pre-determined shares.
68. Apart from the evidence shared above, there is also proof of behavior on the part of the Association that, could very well act as a precursor to collusion among its members, as against an approach of general industry wellbeing.
69. Examples of such behavior on the part of the association or its members is request for postponing a tender on account of changing cost factors such as price of raw material, new taxes/levies etc, and then manipulating a tender's outcome by withholding participation. Decision of not participating in the tenders is backed by the firms in the form of a written agreement.
70. Relevant Excerpts of letters of such nature, addressed to several DISCOs, have been reproduced below for convenience;

Supply of Line Distribution/Hardware Material to FESCO – Annex ZG

M&CA/2354/18

Dated: 1.11.2018

The Chief Executive Officer

Fesco Ltd.

Faisalabad.

Sub: Supply of Line Distribution/Hardware Material to Fesco

Our most of the members of this association participated in FESCO tenders opened in your good office from 21-6-2018 to 26-06-2018.....Our participated firms quoted most competitive rates as per prevailing market rates of raw iron material at that time in view of the quantities mentioned in these Tenders for each item.

Being lowest bidders, FESCO has placed Pos/LOI placed or being placed with enhanced quantities of 50%.....

.....Keeping in View position explained above we all members of this association earnestly request your honour to kindly amend and reduce the quantities of all POs/LOIs as per quantities mentioned in Tenders.....

Thanking you,
Yours Faithfully,
Raza-ur-Rehman
President
Manufacturers & Contractors Association

Letter dated 18-06-2019 to Managing Director – PEPCO for escalation of rates in the purchase of line hardware material Annex ZH

.....Accordingly all members of this association participated in the tenders of all DISCO companies floated during the last six months and quoted their rates as per prevailing market rates of US Dollar.....and we all members of this association earnestly request your honor that necessary directive may kindly be passed on to all CEOs of DISCOs companies for grant of Escalation Rates as per ratio of devaluation os PAK Rupees as compared to the present prevailing market of US Dollar which comes to Rs. 160 per Dollar and save us from huge financial loss....

Request for postponement of tenders, letter dated 13-12-2017 sent to Various DISCOs, Annex ZI

Subject; REQUEST FOR POSTPONEMENT OF TENDERS

Dear Sir,

With profound reverence, I, being the president of association would like to draw your good self's special attention towards the presently observed unstable market situation where the rates of raw materials have suddenly boosted up would like to request your honor to kindly postponed all the tenders enabling the members to quote fair rates of stores, please.

Thank You,
Your Sincerely,
For Raza-Ur-Rehmanmn
(President)

Letter dated 27-04-2017 sent to FESCO for postponement of tenders – Annex ZJ

Subject: Request for postponement of tender nos. 1212,1213,1214,1215,1216,1217,1218,1219,1220,1221,1222,1223,1224,1225, & 1226 to be opened on 10 & 11.05.2017 for the supply of various hardware materials.

Dear Sir,

In connection with the subject tenders, it is necessary to inform your good self about the present uncertainty aspect regarding the rates of raw materials (Steel Products) the members of association in a meeting held on 24.04.2017 considered the

issue (**copy of agenda points a/w members signatures attached**).....I, being the president of association, would like to **request your good self to kindly postpone the subject tenders** after the federal budget please.

Thank you,

Yours Sincerely,
Raza-ur-Rehman
President

Letter dated 27-04-2017 sent to PESCO for postponement of tenders – Annex ZK

Dated: 27.04.2017
The Manager (MM)
PESCO LTD
Peshawar.

Subject: Request for postponement of tender nos. 63, 67, 68, & 69 & 70 to be opened on 02 & 03.05.2017 for the supply of various hardware materials.

Dear Sir,

With due regards, I, being the president of association, would like to request your good self to kindly postpone the subject tenders after the forth coming federal budget which will certainly affect the prices of raw materials in the market.

Thanking you,

Yours Sincerely,
For Raza-ur-Rehman
President

Letter dated 12-04-2018 to MEPCO for postponement of tenders, Annex ZL

M&CA/2034/18
The Director (Proc) Distt:
Mepco Ltd.
Multan.

Dated: 12.04.2018

Sub: Tender Notice for the supply of line distribution material and conductors

Dear Sir,

Kindly refer to your tender notices published in Daily Newspapers scheduled to be opened on 17.04.2018 & 18.04.2018 **annual wafaqi budget for the financial years 2018-19** it is expected that some duties are being imposed by government on steel & Aluminum products..... **it is not possible for all members of this association to work out our rates of said material mentioned in the above tenders.**

Raza-ur-Rehman
President
Wapda Manufacturers & Contractors Association

To the same effect as aforementioned letter,

Letter dated 12-04-2018 sent to QESCO for postponement of tenders, Annex ZM

Decision of association meeting that no member will participate in tenders, Annex ZM1

A meeting was held under the chair of Mr. Raza ur Rehman sb for the decision of coming tenders in Peshawer, Lahore & Faisalabad.

It is unanimously decided that no one member will participate in these coming tenders till the Budget which is in the May.

It is agreed by all members.

71. It appears that in fulfilling its scheme of share allocation, the Association also indulges in lobbying with the procuring agency to influence them to break up the tender quantity in smaller lots apparently so that more of its members can be adjusted in any given tender. An example to this effect is the letter dated 21-02-2020 sent to MEPCO by MCA, wherein a request is made to break up the tender quantity into smaller lots for greater participation.
72. While greater participation in general sense is good for competition, in an industry where there is apparently an organized system to rig the bidding procedure, such a move could only be seen in the light of Association's special role to allocate market share among its members, for any given market in any given tender. This is further strengthened by the fact that the SOPs for the association members specifically ask its members to do their best in breaking up tender quantities where the lot size is large, and abstain from participating in such tenders, if the said goal is not achieved.

Letter addressed to The Chief Engineer Mepco dated: 21-02-2020 by the President Mr. Raza ur Rehman regarding division of quantity in lots Annex ZN

With due respect, I being the president of association would like to draw your kind attention towards the quantities of subject cited tender store of 11kv Dropout Cutouts.....it is suggested to make two equal lots of 10000Nos. quantity tender while three equal lots for 15000 Nos quantity tender.....

Conclusion/ recommendation

73. The foregoing evidence indicates a strong propensity among suppliers of line hardware to form, Cartels/sub-cartels/consortiums etc. with the direct involvement and facilitation of their association. The apparent objective of such behavior seems to be gaining control over the outcome of tenders for mutual benefit. This could inevitably have negative implications on efficient means of procurement, wherein only efficient firms survive while non-performing ones phase out of the market. An idea of the damage caused by a rigged tender can be gauged from a research by International Monetary Fund that shows a 30% efficiency gap in terms of quality vs cost balance in infrastructure development of various projects. The foregoing implies, on an average, a 30% deterioration in quality in concomitance with a 30% increase in price in such procurements.
74. The evidence suggests that under the umbrella of their association, line hardware suppliers, have developed strict SOPs, that divide tender quantities, manipulate tenders by identifying when and who will participate in bidding, among other things. This whole process is executed in a sophisticated fashion so as to give semblance of competition in the market. This, apparent manipulation of tenders that rotates contracts, divide quantities, adjusts and readjusts tender allocation and orchestrate the outcome of a tender by determining aspects such as who would participate, who would quote a false bid (supporting bid) and whether there will be a single or several winners requires strict cooperation among the line hardware suppliers as against the latter competing with each other for any given tender.
75. This evident tendency of collusive tendering on the part of line hardware suppliers, manifested in various forms such as agreements, SOPs/Association's decision, ostensibly have the object or effect of preventing and restricting competition in the relevant market, therefore, constituting a *prima facie* contravention of Section 4(1) read with Section 4(2)(e) of the Act.

76. In view thereof, the Enquiry Committee recommends that the Commission may consider initiating proceedings under Section 30 of the Act against the Contractors and Manufacturers Association, its member undertakings as well as any other undertakings that as per evidence, seem to have indulged in coordinated behavior as discussed above. A complete list of all such undertakings, as per evidence held by the Commission is attached as **Annexure ZO**.

Qasim Khan
Enquiry Officer

Irfan ul Haq
Enquiry Officer