

Enquiry Report

In the matter of Cartelization between Electric Power Equipment Manufacturers

FACTUAL BACKGROUND

1. This report has been prepared in pursuance of the enquiry authorized by the Competition Commission of Pakistan (the 'Commission') on 12 May 2011 against alleged collusive bidding by electric power equipment manufacturers.
2. Prior to the enquiry, material evidence was received from an informant regarding, *prima facie*, collusive activities of electric power equipment manufacturers participating in the procurement tenders called by electric power distribution companies (DISCOs).
3. The informant provided data in respect of bids submitted in respect of tenders issued by Peshawar Electric Supply Company (PESCO) for the procurement of 20 KV, 25 KV, 100 KV and 200 KV transformers in the sum of PKR 2.36 billion for FY 2011. The said data, *prima facie*, revealed that the bids submitted by all the participants were exactly identical, although the bidding was intended to be competitive. According to the information provided by the informant, it was asserted that the other power DISCOs had also floated similar kind of tenders and the bids they received were also identical.
4. On the examination of the information provided by the informant, it *prima facie* appeared that the bidders coordinated their individual bids with regard to the tender floated by the PESCO in violation of Section 4 of the Competition Act, 2010 (the Act).
5. Upon the perusal of the information, the Commission decided to initiate a formal enquiry under Section 37(2) of the Act. Pursuant to the powers contained in Section 28(2) of the Act, the Commission appointed Nadia Nabi, Senior Joint Director (C&TA), Syed Umair Javed, Deputy Director (C&TA) and Muhammad Fahad Junior Executive Officer (C&TA) as enquiry officers (hereinafter collectively referred to as the "Enquiry Committee") to conduct an enquiry into the matter and to submit an enquiry report upon conclusion of the enquiry.
6. Keeping in view the information provided by the informant and on the recommendations of the Enquiry Committee the Commission deemed it appropriate to authorize a team of officers for inspection of the premises in use of Pakistan Electric Manufacturers Association (PEMA), located at FICO House, 2-C, LDA Flats, Lawrence Road, Lahore under the power granted to it by Section 34 of the Act in order to collect any further evidence regarding the suspected violations of the Act.

7. During the inspection of PEMA's premises carried out on 9 June 2011, the authorized officers found that PEMA shared the premises with FICO High-Tech (Pvt.) Ltd. (FICO) and the demarcation of the offices was not apparent. The employees of the FICO obstructed the authorized officers from carrying out the impounded documents. The authorized officers were physically stopped by FICO employees and only managed to get out with just the electronic data.
8. The electronic data recovered from PEMA's premises during the inspection, *prima facie*, indicated that FICO, being an active member of PEMA, is involved in collusive activities with other PEMA members. Moreover, electronic data and informant's information also, *prima facie*, indicated that Pak Elektron Limited (PEL) has also been involved in collusive bidding in tenders issued by the DISCOs. It was reported by the authorized officers that the electronic data was in agreement with the evidence seen by the authorized officers in the documents that had been impounded.
9. Based on the information provided to the Commission by the officers authorized to conduct the inspection of PEMA, two teams of officers were further authorized to conduct an inspection of the premises in use of PEMA and FICO, and the premises of PEL. The inspections were conducted by the authorized officers of the Commission simultaneously on 15 June 2011.
10. The inspection of the premises in use of PEL, located at 14 Km, Ferozpur Road, Lahore, lasted almost 9 hours. While the management of PEL initially allowed the inspection, they obstructed the authorized officers from impounding the documents without a reasonable cause. . Therefore, an order under Section 35 of the Act was served on PEL and. Despite facing intense opposition from PEL, the authorized officers, eventually managed to complete the inspection successfully. Subsequently, PEL's senior management assured the Commission of their full cooperation in concluding the enquiry.
11. At the premises in use of FICO and PEMA, the authorized officers were similarly stopped from conducting the inspection. Despite being presented with Section 35 orders, FICO's employees locked the authorized officers inside the premises and called the police to implicate the authorized officers in fake cases. The police however, after reviewing the situation, sided with the authorized officers and therefore, the officers were able to successfully complete the inspection. Since the inspection, FICO has shown no remorse for its conduct nor did it cooperate during the enquiry.
12. During these inspections various documents including valuable information was seized and impounded by the authorized officers of Commission from PEMA, FICO and PEL offices.
13. This enquiry report relies, *inter alia*, on the documents and information impounded from the abovementioned inspections. To summarize, the Enquiry

Committee has found substantive evidence of a structured framework of collusive bidding in the public procurement of certain electric power equipment, by its manufacturers. Such equipment includes switchgear, energy meters, and transformers.

14. This evidence has come to light from the tedious and painstaking perusal of voluminous documents that were impounded from the abovementioned inspections. The examination of the impounded documents enabled the Enquiry Committee to identify and record the methods used by the various electric equipment manufacturers to collude amongst themselves to fix prices and divide quantities of goods being procured.
15. The examination further reveals that various electric power manufacturers have formed fora/groups under, and at times beyond, the umbrella of the PEMA, according to the product in question to discuss and decide upon the prices and quantities to be quoted in response to tenders issued by various electric power distribution companies. Based on the documents, there is also an indication that the procuring agencies have engaged manufacturers in discussion on discount on price of one particular category of transformer prior to bidding which itself is an anti-competitive behavior.
16. Broadly speaking the evidence impounded comprises, *inter alia*, email communications, minutes of meetings, data sheets, summaries and proposal documents.

UNDERTAKINGS

17. The term undertaking has been defined under clause 2(1) (q) of the Act in the following terms:

“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 of undertaking.

18. For the purposes of this enquiry report, following are the relevant undertakings:
 - a. **Pakistan Electric Manufacturers Association (PEMA).** PEMA is an association of various electric power equipment manufacturers and hence is an undertaking in terms of Section 2(1) (q) of the Act.
 - b. **M/s Syed Bhais (Pvt.) Limited.** (Syed Bhais) 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) (q) of the Act.

- c. **M/s Syed Bhais Electronics Engineering & Control (Pvt.) Limited** (SBEEC 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) (q) of the Act.
- d. **M/s Creative Electronics (Pvt.) Limited** (Creative) 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) (q) of the Act.
- e. **M/s Pak Elektron Limited** (PEL) is the pioneer manufacturer of electrical goods in Pakistan incorporated in 1956 in technical collaboration with M/s AEG of Germany. In October 1978, the company was taken over by Saigol Group of Companies. The company is engaged in manufacturing of electrical equipments and home appliances. Hence, PEL is an undertaking in terms of Section 2(1) (q) of the Act.
- f. **M/s FICO Hi-Tech (Pvt.) Limited** (FICO) was incorporated with the name of Faizi Industries as a Private Limited Company in 1985. Since then FICO is involved in manufacturing of switchgears, control gears, distribution protections and measuring equipments etc. Hence, FICO is an undertaking in terms of Section 2(1) (q) of the Act.
- g. **M/s Micro –Tech Industries (Pvt.) Limited** (MicroTech) is involved in the design, development and manufacturing of hi-tech products, providing comprehensive solutions in many fields including telecom, power electronics, vehicle tracking systems and consumer electronics to valued customers worldwide, hence is an undertaking in terms of Section 2(1) (q) of the Act.
- h. **M/s Transfopower Industries (Pvt.) Limited** (Transfopower) is a company incorporated in 1990 by a team of engineers who literally pioneered transformer manufacturing and design in the country, the company is engaged in manufacturing of products including distribution transformers, power transformers, furnace transformers, dry type and non inflammable transformers etc. Hence, Transfopower is an undertaking in terms of Section 2(1) (q) of the Act.
- i. **M/s Elmetec (Pvt.) Limited** (Elmetec) is a part of Elmetec group of companies in Pakistan. The company is incorporated in two business lines manufacturing and trading. The Company is engaged in manufacturing of distribution equipments such as distribution transformers, CTs, PTs, and

switchgear panels etc, hence is an undertaking in terms of Section 2(1) (q) of the Act.

- j. **M/s Hammad Engineering Company (Pvt.) Limited** (Hammad) an ISO 9001 certified transformer manufacturing unit is incorporated in 1997 as a transformer manufacturing and repairing industry. The company is engaged in manufacturing of different types and a rating of distribution transformers. Hence, Hammad is an undertaking in terms of Section 2(1) (q) of the Act.
- k. **M/s Ace Indigo Industries (Pvt.) Limited** (Ace Indigo) is a conglomerate of various business units engaged in manufacturing and supplying of parts to electrical utilities and automobile OEM's. It is an undertaking in terms of Section 2(1) (q) of the Act.
- l. **M/s AB Ampere Private Limited** (AB Ampere) is transformers manufacturing company. The company is a regular and trusted supplier to the public utility projects and private sector. Therefore, it is an undertaking in terms of Section 2(1) (q) of the Act.
- m. **M/s Siemens Pakistan** (Siemens) has been active in Pakistan, where it holds leading positions in the three application fields: energy and environmental care, industry & public Infrastructures and health care. Siemens is engaged in business of voltage grid stations, switchgear products and systems, power distribution and power transformers, and network consultancy etc. Siemens is an undertaking in terms of Section 2(1) (q) of the Act.
- n. **M/s Transfab** is the leading manufacturer of various types of transformers including distribution transformers, auto transformers and zig zag transformers etc. Transfab is an undertaking in terms of Section 2(1) (q) of the Act.
- o. **M/s Pan Power International Private Limited** (Pan Power) is an ISO approved company and is engaged in business of manufacturing power transformers etc. Hence, Pan Power is an undertaking in terms of Section 2(1) (q) of the Act.
- p. **M/s Powertech Electrical Industries (Pvt.) Limited** (Power Tech) is a company involved in the production of transformers and other electrical equipment and is an undertaking in terms of Section 2(1) (q) of the Act.
- q. **M/s Escorts Pakistan Limited** (Escorts) is a manufacturer of electric power equipment including energy meters etc. and is an undertaking in terms of Section 2(1) (q) of the Act.

- r. **M/s Metalex** is a manufacturer of electric power equipment including LT and HT current transformers etc. and is an undertaking in terms of Section 2(1) (q) of the Act.
- s. **M/s Siddique Sons Engineering (Pvt.) Limited** (Siddique Sons) is a company that manufactures electric power equipment including LT and HT current transformers as well as various switchgear equipment etc. It is an undertaking in terms of Section 2(1) (q) of the Act.
- t. **M/s Perfect Electro Mek Pakistan (Pvt.) Limited** (PEMPAK) is a company engaged in the manufacture of electric power equipment including switchgear panel etc. hence is an undertaking in terms of Section 2(1) (q) of the Act.
- u. **M/s Baig Electrical Co. (Pvt.) Limited** (Baig Electric) is a company engaged in the production of electric power equipment including HT and LT current transformers etc. and is an undertaking in terms of Section 2(1) (q) of the Act.
- v. **M/s Tariq Electric (Pvt.) Limited** (Tariq Electric) is a company engaged in the production of electric power equipment including switchgear equipment etc. hence is an undertaking in terms of the definition given in Section 2(1) (q) of the Act.
- w. **M/s Area** (Area) is a company that manufactures electric power equipment including switchgear etc. and is an undertaking in terms of the definition given in Section 2(1) (q) of the Act.
- x. **Pakistan Electric Power Company (Private) Limited** (PEPCO) is government owned private company tasked with the supervision of the National Transmission Development Company, the three generation companies and the nine DISCOs. PEPCO is an undertaking as per the definition given in Section 2(1) (q) of the Act. The DISCOs listed below are also undertakings in terms of Section 2(1) (q) of the Act.
 - y. **Islamabad Electric Supply Company Limited** (IESCO)
 - z. **Lahore Electric Supply Company Limited** (LESCO)
 - aa. **Gujranwala Electric Supply Company Limited** (GESCO)
 - bb. **Hyderabad Electric Supply Company Limited** (HESCO)
 - cc. **Quetta Electric Supply Company Limited** (QESCO)
 - dd. **Faisalabad Electric Supply Company Limited** (FESCO)
 - ee. **Peshawar Electric Supply Company Limited** (PESCO)
 - ff. **Multan Electric Power Company** (MEPCO)
 - gg. **Tribal Electric Supply Company** (TESCO)

COLLUSIVE ACTIVITIES

Relevant Market

19. The Commission has, in a number of cases, held that a definition of a relevant market is not required in cases of alleged collusive tendering/bidding which is considered a *per se* violation of competition law. However, a brief description of the relevant market(s)¹ is given below for clarification and reference.
20. The enquiry has revealed multiple relevant markets. The relevant product markets for the purpose of this report is divided according to following different products involved in respect of which tenders are called by power DISCOs. These products are:
 - a. **Switchgear:** Switchgears are used for reliable supply of electricity. It is used to de-energize equipment to allow work to be done and to clear faults downstream.
 - b. **Energy Meters:** Energy meter is a device that measures the amount of electrical energy consumed by a residence, business, or an electrically powered device. Energy meters can be categorized as single phase, three phase, static meters, LT whole current, LT TOU and HT TOU.
 - c. **Transformers:** A transformer is an apparatus for stepping up or stepping down the voltage of an alternating current. Transformers can be classified as LT current transformer, power transformer, distribution transformer, and pad mounted transformers for the purpose of procurement by power DISCOs.
21. Each of the abovementioned products in the overall broad categories is unique in terms of characteristics, usage and price and cannot be substituted by another. Such specific items are procured by DISCOs from all those manufacturers/suppliers who are approved by WAPDA/PEPCO/DISCOs and are pre-qualified/registered for the material to be procured. Each tender floated by a DISCO in respect of any aforementioned specific item determines a relevant product in terms of specifications given in the tender.
22. As has been mentioned above that specific products are procured by DISCOs from all those suppliers who are approved by WAPDA/PEPCO/DISCOs and are

¹ Section 2(1) (k): "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."

pre-qualified/registered for the material to be procured, hence the geographic market is whole of Pakistan.

23. Accordingly the relevant market is that of specific switchgear, energy meters and transformers equipment in the whole of Pakistan.

Collusive Bidding

24. Bid rigging is a particular form of collusive activities whereby bidders coordinate their bids on procurement or project contract. It is a term applied to a wide range of practices whereby competitors in a bidding process coordinate among themselves to prevent, restrict or reduce competition in the market. In most of the bid rigging cases coordination among the bidders/competitors is carried out in terms of fixing the price or allocating the quantities to be supplied.. This has the object and effect of reducing competition in the market and is especially problematic in case of public procurement where the taxpayer is adversely affected.
25. 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. Section 4 in relevant parts is 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.*

Collusive Activities of PEMA

26. Our enquiry reveals that PEMA is an informal association of Pakistan electric equipment manufacturers which comprises of manufacturers of various electric power equipment supplied to DISCOs in Pakistan. To verify the total number of members and scope of activities of the association, the Enquiry Committee sent a letter to Mr. Rana Sadiq, Secretary, Pakistan Electric Manufacturers Association at the address of FICO House, LDA Flats C-2, Lawrence Road, Lahore on 12 July 2011. The aforementioned letter required PEMA to submit its License/registration certificate, copy of Memorandum of Association & Article of Association and also the list of its members. However, no reply was received from the association.
27. The following evidence in form of materials impounded from the search of PEL office explicitly indicates that, *prima facie*, PEMA members have regularly meetings at the platform of their association to discuss the tenders floated by DISCOs and formulate a common strategy in respect of tenders. Discussions at the PEMA forum include deliberation on fixing the price and allocation of quantities of electric power equipment required under the tenders.
28. Following are some extracts from the impounded documents:

PEMA meeting dated 14 May, 2010 - Annex A

Members are requested to meet in PEMA office tomorrow (Saturday) i.e. 15th May, 2010 to discuss situation arisen due to tender prices received against HESCO tenders. QESCO tender (KF) was allocated to T-05. T-05 should bring their tender and other members willing to participate as supporting should also bring their tender duly filled signed and stamped. Further, members who purchased the tender but are not participating should bring along the original documents.

Minutes of PEMA meeting dated 25 April, 2011 – Annex B

PESCO had asked for meeting on 26th April, 2011 at 3:00 PM and in his connection member met together and resolved after exchange of information's available with them to have a common strategy while acknowledging the invitation and asking for meeting in the next week with date and time convenient to the BOD.

Letter will be written, signed and faxed by the members individually to PESCO with the copy to the undersigned.

Minutes of PEMA meeting dated 09 May, 2011 – Annex C

Today's meeting was attended by CEOs/Directors/General Manager and the decisions taken are annotated as follows:-

- 1. Any decision taken by DISCOs which affect the spirit of MD's Directive No.2479-2503 dated 02-05-2011 should not be*

acceded and/or accepted. Any LOI issued by any DISCOs in contrary to the given understanding shall not be entertained.

2.
3.
4.
5. *LOI issued from TESCO should not be entertained as the same has been issued against the spirit of MD's Directive. Further likely action will be communicated after having discussed jointly in the next meeting.*
6. *LESCO Tender based on capitalization of losses should be considered scraped as new specification with amendment 05 has been issued/implemented. Any action as to revalidation, negotiation or acceptance of old prices etc. is likely to jeopardize all efforts in getting outstanding issues relating to new prices settled.*

Collusion in Switchgear Market

29. Examination of impounded documents also reveals that initially there were only four players i.e. Siemen, PEL, AREA and FICO in the switchgear market. Almost 80% of the market share was captured by these manufacturers upto 2006-07. These four manufacturers had formed a 'switchgear forum' where decisions were taken by them to divide share in WAPDA tenders among themselves to avoid any competition with each other.
30. Tariq Electric, Syed Bhais and Bilal Electric also entered in the business of switchgear however, their focus was private market using low price as their strategy. Only Syed Bhais participated in WAPDA tenders but later on it became inactive.
31. During 2004-05 new companies namely; Siddique Sons and PAMPAK entered into the switchgear market and got approved their prototypes from WAPDA. Siddique Sons and PEMPAK proved strong contestants to Siemen, PEL, AREA and FICO. In order to avoid price war with Siddique Sons and PEMPAK, the abovementioned four players i.e. Siemen, PEL, AREA and FICO included them to their 'switchgear forum'.
32. Detail of switchgear forum and its active member including Siemens, PEL, FICO, AREA, PEMPAK and Siddique Sons is provided at **Annex D**. The annex, which is a business plan developed by PEL, provides insight into the creation of the forum and states, at one point, that '*in order to avoid a price war Siddique Sons and PEMPAK, being strong contestants, were included in the Switchgear forum*'.
33. **Annex E** and **Annex F** are perhaps the most important documents with regards to the switchgear forum. Annex E explicitly spells out the share allocation of switchgear among Siemens, PEL, PICO, AREA, PEMPAK and Siddique Sons in the past three years. Annex F contains details of 93 tenders floated by

WAPDA/DISCOs in the years 2007-08, 2008-09 and 2009-10. It documents the allocations made and the actual achievement against the allocation of five companies identified by code names. By comparing the figures with those present on Annex E and with margin comments on Annex F, the following firms have been identified against the code numbers: SGS003: Siemens, SGP004: PEL, SGF002: FICO, SGA001: AREA, SPP005: Perfect (PEMPAK), and SSS006: Siddique Sons. The collusive nature of this document is clarified by the fact that numerous tenders are marked 'due on [DD-MM-YYYY]' date. This clearly shows that these tenders had not yet been opened, yet allocations had been made amongst the members.

34. Facts and evidence available on record substantiates share allocation and dispels any doubt regarding the existence of an agreement between the switchgear forum members to divide tender quantity accordingly in the tenders invited by DISCOs for procurement of switchgear. 93 such instances can be identified in Annex F. Such collusive activities, *prima facie*, violate Section 4 (1) read with Section 4(2) (b) & (e) of the Act.

Collusion in Energy Meters Market

35. Documents impounded from PEL, PEMA and FICO indicate that meter manufacturers namely; PEL, Syed Bhais, SBEEC (now known as KBK Electronics Private Limited), MicroTech, Escorts and Creative (hereinafter collectively referred to as "Meter Manufacturers"), *prima facie*, have formed a meter forum. Objectives of this meter forum include *inter alia*; to provide a communication link among the Meter Manufacturers, to act as an official voice of the energy Meter Manufacturers, to help settle the pricing and market share among the Meter Manufacturers etc.
36. This forum has laid down working SOPs for its members to follow as contained in **Annex G**. These SOPs are self explanatory and provide for the share allocation procedure and also penalty mechanism if any member deviates from the agreed arrangement. SOPs further provide for share allocation based on the category of meters (i.e. Single Phase, Three Phase etc.) which is further based on the past performances of forum members. However, for new allocation the quantities delivered, balance quantities and business in pipeline is considered.
37. The meter forum is the perfect example of a cartel with carrot and stick approach. If a member quotes quantities other than his allotted share, then it will be penalized by 20 % of the quoted quantity for three phase and in addition will also return extra quantity if ordered by the customer. If a member quotes prices lower than price decided by the forum then the firm will be penalized by 20% of the quoted quantity or 20,000 units whichever is higher for single phase and 10 % of the quoted quantity or 5,000 units whichever is higher in case of the three phase meter. Following is an excerpt taken from impounded material regarding working of the meter forum.

Proposal for Running of Meter Forum – Annex G

Working SOPs

It is proposed that share of all the members may be decided on the basis of the category of meters (i.e. Single Phase, Three Phase etc.) which will be further based on their past performances. However, for new allocation the following be considered.

- a. Quantities delivered*
- b. Balance Quantities*
- c. Business in Pipeline*

No member is allowed to quote prices of quantities other than decided by the forum. If any member will do so than the forum has the right to take following actions:

- If a member quote quantities other than his allotted share, the he will be panelized by 20 % of the quoted quantity for Three Phase and in addition will also return extra quantity if ordered by the customer, against the original allocation. The member will compensate this penalty from his immediate share or as decided by the forum.*
- If a member will not follow the forum decision and quote prices lower than price decided by the forum then the firm will be panelized by 20% of the quoted quantity or 20,000 units whichever is higher for Single Phase and 10 % of the quoted quantity or 5,000 units whichever is higher in case of the Three Phase meter. The member will compensate this penalty from his immediate share or as decided by the forum.*

38. These meter forum members regularly exchange emails and have meetings to take decisions as to the price and share allocation for different categories of energy meters procured by different DISCOs. Followings are few excerpts taken from emails exchanged between meter forum members highlighting their collusive activities in respect of different tenders:

Email dated 16 July 2009 – Annex H

From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
Cc: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: SBEEC's Response Received through telephone call

M/s SBEEC has confirmed that they are willing to go along with the forum in local tenders only. M/s SBEEC reiterated that as agreed in earlier Forum meeting, Forum members can quote

independently for any quantity at any price against international tenders.

M/s SBEEC is willing to give compensation in future tenders in case of award of contract against international tenders, this is subject to the condition that share allocation of each member is decided in the forum.

Email dated 23 July, 2009 – Annex I

*From: Escorts
To: Mian Nazim
Subject: IESCO Tender for S/P Static Meter*

This is with reference to IESCO Tender for 200,000Nos. single phase static meter. Kindly refer to meter forum meeting of 1st July, 2009. It was decided in this meeting that all forum members will quote Rs.1850/- for single phase static meter and the quantity will be open. It was also decided that the following clauses will not be accepted:-

- 1. Rs. 250 penalty clause is not acceptable and this will be clearly mentioned in the bids of all forum members.*
- 2. Performance Bond valid for 12 months after the completion of supply will be submitted and 24 months validity bond is not acceptable and this will be clearly mentioned in the bids of forum members.*

We adhere to the decisions of forum in letter and spirit and mentioned the above two clauses in our bids very clearly. We regret to inform you that IESCO has intimated that M/s PEL and M/s SBEEC has not mentioned these clauses in their bids. Only M/s PEL and M/s Creative mentioned these clauses....

This is very serious and grave breach of trust and confidence on the part of three forum members. You are requested to ask from these forum members the reasons of this grave breach and take all the forum members in confidence. Further the proposed SOP of meter forum which has been verbally agreed by all the forum members and penalty clause of this SOP should be activated to take action against the three forum members. Such breach of forum decisions are forcing us to violate the forum decisions in future, such a violation can have very devastating and damaging effect on the price of future local energy meter tenders.

Email dated 23 July, 2009 – Annex J

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
Cc: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: IESCO Tender for S/P Static Meter*

Escorts have pointed out certain discrepancies from what was agreed and what has been offered by PEL, SBEEC and Creative in their IESCO Tender. Your comments in this regard are urgently required.

Email dated 28 July, 2009 – Annex K

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan
CC: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: RE: Meeting Note-Wednesday July 29, 2009*

Meter Forum Meeting

Agenda Points:

IESCO Static Single Phase Tender Issues.

Meeting will be hosted by M/s SBEEC

Email dated 28 July, 2009 – Annex L

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
CC: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: RE: Meeting Note-Wednesday July 29,2009*

Meter Forum Meeting

July 29, 2009 (Wednesday)

Board Room D

PC Hotel

Lahore

Agenda Points:

- 1. IESCO Static Single Phase Tender Issues.*
- 2. Issues related to International ADB Tenders for GEPCO, HESCO, FESCO & QESCO.*

Meeting will be hosted by M/s SBEEC

Email dated 03 August, 2009 – Annex M

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
CC: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: RE: Meeting Note-Wednesday August 5, 2009 @ 03 PM*

Meter Forum Meeting

Agenda Points:

1. HESCO Tender # ADB-HESCO-08/2009 due date August 12, 2009
2. QESCO Tender # ADB-QESCO-08/2009 due date August 12, 2009
3. FESCO Tender # ADB-FESCO-08/2009 due date August 12, 2009
4. IESCO Tender # 026 due date August 19, 2009
5. MEPCO Tender # 0609-31 due date August 24, 2009
6. FESCO Tender # -----due date-----
7. Meter Forum S.O.P

Meeting will be hosted by M/s ESCORTS

Email dated 19 January, 2010 – Annex N

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
CC: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: MEPCO Tender*

This is with reference to MEPCO Tender for 18000 Nos. Three Phase Static meter and 150,000 Nos. Single Phase Static meters. MEPCO has included the following clauses:

1. *Bid Bond for Single Phase meter will be Rs. 7 Million and for Three Phase Static meter will be Rs. 4 Million.*
2. *The bidder can not quote less than 50% of the tender quantity.*
3. *Delivery will start from the date of issue of P.O.*

These above mentioned clauses are not acceptable to us in any circumstances. MEPCO has arranged a pre-bid meeting on 21-01-2010. You all requested to depute your senior executives to attend this meeting and get these clauses deleted.

Email dated 25 March, 2010 – Annex O

*From: Escorts
To Main Nazim, Masroor Khan (Syed Bhais)
Cc: Micro Tech, SB Electronics, Creative, PEL.
Subject: RE: Mr. Zafar Ahmad Pirzada Secretary Forum till March 27th*

As per meter forum decision on March 22, 2010. We have sent the attached letters to MEPCO for single and three phase static meter tenders.

Email dated 07 May, 2010 – Annex P

*From: Munir Ahmad Khan (SBEEC)
To: Main Nazim, Masroor Khan (Syed Bhais)
CC: MicroTech, Creative, PEL, Escorts.*

Subject: Minutes of Meeting dated 06-05-10

Please note SBEEC will quote their price for SP Meters against Lot-4 @ Rs.1884/- instead of Rs.1895/- and for three phase for LOT-3&4 will be @8950/- instead of Rs8960/- and Escorts should quote Rs.8960/.

Email dated 08May, 2010 – Annex Q

*From: Escorts
To: Munir Ahmad Khan (SBEEC), Mian Nazim & Masroor Khan (Syed Bhais)
CC: PEL, MicroTech, Creative.
Subject: RE: Minutes of Meeting Dated 06-05-10*

We will adhere to the decision of the forum as communicated by Secretary forum in its subsequent minutes and quote LESCO three phase meter as per forum decision. The forum decision should not be changed now.

Further it is practice of meter forum that the members who quote meters with short delivery schedule will quote less price than the members who quote with long delivery schedule.

Email dated 22 May, 2010 – Annex R

*From: Munir A. Khan (SBEEC)
To: Mian Nazim (Syed Bhais)
Cc: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: LESCO Tenders*

As the delivery schedule has not been amended as agreed during meeting, please ask all members to send their request for extension in the opening date of the tenders as the amendment is still awaited. We have to ensure that the agreement has to be implemented in total. We will not agree to partial acceptance.

Email dated 25 May, 2010 – Annex S

*From: Munir A. Khan (SBEEC)
To: Mian Nazim (Syed Bhais)
Cc: Micro Tech, SB Electronics, Creative, PEL, Escorts.
Subject: LESCO Tenders*

Please ensure nobody should participate until the extension in delivery period is issued.

Email dated 12 June, 2009 – Annex T

*From: Mian Nazim (Syed Bhais)
To: SBEEC, Syed Bhais
Cc: Micro Tech, Creative, PEL, Escorts.*

Subject: Allocation against MEPCO Tender#0608-93

Please find below revised allocation against MEPCO Tender # 0608-93 for supply of 3-Phase Static Whole Current Meters. M/s Creative is willing to forgo his share in this tender. They will be compensated in next immediate tender.

Email dated 16 July, 2010 – Annex U

*From: Muhammad Anwar Rana (Creative)
To: SBEEC, Syed Bhais, Micro Tech, PEL, Escorts.
Subject: Purchase of 90 Nos HT TOU Meters through short quotation*

GEPCO wants to purchase 90 Nos. HT TOU Meters on emergent basis through quotation while as per forum decision we have already participated in the GEPCO tender for 100 HT TOU Meters opened on 12-04-2010 @ rate Rs.10,400/- as this is our share and we are going to send our quotation at the same rate for this qty. and request nobody should send their quotation as this is our share.

Email dated 04 September, 2010 – Annex V

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
Cc: SBEEC, Creative, Micro Tech, PEL, Escorts.
Subject: FESCO Tender for LT, HT & Static Three Phase Meters*

Please note that nobody will accept following terms and will also clearly mention in covering letter as deviation.

Performance Bond

Performance guarantee to be submitted @ 5% of the total contact valid for 12 months instead of 24 months.

Payment

Only sales tax & SED documents are to be pre-audited instead of 100% payment to be released duly pre-audited. Incase if it is not acceptable to any member then please get back to me by today evening otherwise it's understood that every member will follow the instructions.

Email dated 31 March, 2011 – Annex W

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
CC: SBEEC, Creative, Micro Tech, PEL, Escorts.
Subject: Meter Forum Meeting April 05, 2011*

*“Meter Forum Meeting”
April 05, 2011 (Tuesday)*

*Time 12:30
Board Room E
PC Hotel
Lahore*

Email dated 05 April, 2011 – Annex X

*From: Mian Nazim (Syed Bhais)
To: Masroor Khan (Syed Bhais)
CC: SBEEC, Creative, Micro Tech, PEL, Escorts.
Subject: Meter Forum Meeting April 06, 2011*

Please note that due to non availability of some members on Thursday now meeting will be held on Wednesday i.e. April 06, 2011 same time but PDR Conference room. MEPCO tender is due on April 11th so we should not delay the meeting any further so please try everybody to attend the meeting on this schedule.

Agenda Points

- 1. IESCO Tender No. 135 due on 19-04-11*
- 2. MEPCO Tender No. 126 due on 11-04-11*
- 3. HESCO International Tender*
- 4. PESCO International Tender*
- 5. LESCO Three Phase Tender*

39. Above quoted excerpts which have been taken from the impounded documents reveal that tender related information is exchanged between the members before submitting the tender documents. In forum meetings, members bring along their tender documents. Even before the due date of tenders, members of the meter forum meet to discuss the tenders for further strategy. If any member forgoes its share in any tender, it is compensated in next immediate tender.
40. Once the share in quantity is allocated and decided in the forum, members adhere to such decision. Deviation by any member from decision of forum on price and share allocation is considered a very serious and grave breach of trust and confidence. At times, it has been proposed by aggrieved members that penalty clause of SOPs should be activated to take action against those members who committed breach of forum decisions as such a violation can have very devastating and damaging effect on the price of future local energy meter tenders.
41. Meter forum's decisions are not restricted to only price and share allocation rather the forum also discusses and decides on delivery schedules and other important clauses of tender documents such as bid bond, performance bond, payment, sales tax & SED documents etc. It is interesting to see that collusion of Meter Manufacturers from the platform of meter forum bestows a strong bargaining position on them. If the delivery schedule is not amended by DISCOs as agreed during the meeting of Meter Manufacturers, they collectively send their request for extension in the opening date of the tenders to ensure that the agreement is implemented in total and not in partiality. Following the decision of meter forum,

none of bidders/members participate in the tender until the extension in delivery period is issued.

42. On the basis of information and documents available on record a, *prima facie*, collusive arrangement among the Meter Manufacturers particularly in terms of offering a pre-determined price and quantity is substantiated. Offering a pre-determined price and quantity in bids and taking other collective decisions regarding tendering by the Meter Manufacturers appear to have the object of preventing, reducing, restricting or distorting competition in the market of public procurement of different categories of energy meters. Therefore it is concluded that Meter Manufacturers have entered into an arrangement that, *prima facie*, violates Section 4 (1) read with Section (2)(a), (b) & (e) of the Act.

Collusion in the Transformers Market

Power, Distribution and Mounted Pad Transformers

43. In the aforementioned categories of transformer business, manufacturers who actively participate in WAPDA/DISCOs tenders appear to have formed a cartel to devise a strategy to rig the bids. Interestingly, from impounded material it has been learnt that these transformer manufacturers also refer to each other with their code names while deciding on the share allocation and price of transformers to be quoted in bids. Following is the list of transformer manufacturers/cartelists with their code name reproduced for ease of reference in the enquiry report and the annexure/evidence relied upon:

S. No.	Manufacturers	Code Name
1	Elmetec	T-02
2	PEL	T-04
3	Siemens	T-05
4	Transfab	T-06
5	Transfo Power	T-07
6	AB Ampere	T-08
7	Ace Indigo	T-09
8	Hammad	T-10
9	Pan Power	T-11
10	Power Tech	T-12
11	Syed Bhais	T-13

44. These manufacturers have been identified by using **Annex Y** and by comparing signatures over various impounded documents. The manufacturers shown in the table above are hereinafter collectively referred to as “Distribution Transformers Manufacturers”.
45. Collusive activities of Distribution Transformers Manufacturers in respect of tenders invited by WAPDA/DISCOs for different categories of transformers are

evident from the following minutes of meetings and emails exchanged between them.

Minutes of Meeting dated 28-02-2009 – Annex Z

During today's meeting the following came under discussion where it was agreed that:

IESCO tender for 10 KVA Distribution Transformers, 100KVA Pad Mounted Transformers & 400KVA Pad Mounted Transformers should be assigned to the following members. The allocated quantity & prices would be:

- *No member will quote as supporting offer in 10 KVA Tender.*
- *T-08 & T-11 will quote unit rate Rs. 622,000/- for educational order with the condition that order will be accepted at the prices at which order is assigned to prospective bidder.*
- *T-08 & T-11 will quote unit rate Rs. 1,472,000/- for educational order with the condition that order will be accepted at the prices at which order is assigned to prospective bidder.*

Note:

- *Above all prices are without GST & without SED.*
- *Tender from dully filled and signed will be seen by members on 02-03-2009 at 11:00 AM at PEMA office. Delivery and other terms & conditions as per tender terms.*

Minutes of the Meeting dated 12-06-2009 – Annex AA

During today's meeting the following came under discussion where it was agreed that:

HESCO tender No. 460,461 & FESCO tender No. 73,74 for Transformers due for opening on 23-06-2009 & 27-06-2009 respectively will be participated as follows:

Prices & QTY to be quoted in following Tenders:

.....

Note:

- *Above all prices are without GST & without SED.*
- *Delivery schedule as per tender terms.*
- *All other terms & conditions as per tender documents.*
- *Members will strictly adhere to this above prices/conditions.*

Minutes of the (C.E) Meeting dated 06-07-2009 – Annex AB

Mr. Saeed Shamsi being the Chairman chaired the meeting and the matter discussed are reproduced in brief as follows:-

- **Review of business 2008-2009**

Members were informed that during business year ending on 30th June, 2009 different DISCOs finalized tenders / orders:-

- *Order /Lol (including repeat orders) 41,230-Nos*
- *Still not materialized 8,960-Nos*
- *Discussed in forum but arrangement disturbed (HESCO & FESCO) 1,500-Nos*
- *Total 50,190-Nos*
- *Valuing Rs. 8.800 Billion.*
- *Price increased over last year arranging 22% to 26%*

The above achievements resulted due to better interaction and understanding of the Members during Forum's meetings and subsequent visit to DISCOs, avoiding negative selling.

- **Expected / forecast for 2009-2010**

Members opinioned that market for next year would be beyond 50,000-Nos transformers which would cater for replacement, village electrifications and additional quantity due to increase in power generation.

- **Views from the members:**

- *Members expressed their confidence in forum's working for better realization of profit. A few members did deviate in handling tenders in contrary to the agreement made in the forum (HESCO & FESCO) without realization of action / reaction and thinking of consequences thereafter. It was decided by the Chairman that such activities should be avoided to safeguard further disturbances and better understanding / working of the forum.*
- *T-12 & T-13 could not perform due to internal problems, but it was agreed that their share will not be disturbed.*

- **Share Allocation:**

- *Members expressed their satisfaction over allocated / realized share. However, T-09 & T-10 pointed out that share percentage was agreed for one year and was subject to be adjustment "re-visit" on performance basis. This meant, in time delivery (No LD), field damages report, material failure at RTL and design failure at HV & SC lab.*

- *T-09 demanded 5% against present share of 2.5 % and T-10 , 7 % against present share allocation of 4 %.Chairman advised both the members to meet him afterward for further discussion.*

- ***SOP's :***

Draft proposal outlining SOPs was attached with agenda but due to paucity of time it could not be discussed.

Members must go through it and return it with their comments, suggestions and recommendation (if any) so that it could be finalized, signed and circulated for ready reference.

The meeting ended with vote of thanks and with the understanding that share allocation shall remain unchanged and member will work, cooperate and not include in any activities damaging the interest of the forum.

Minutes of the Meeting dated 20-07-2009 – Annex AC

“IESCO Tender due on 23-07-2009

Note:

The next tender for 200 KVA Pad mounted Transformers floated by LESCO will be awarded to T-06.

Minutes of the Meeting dated 31-07-2009 – Annex AD

Terms & Conditions:

If any member wants to quote a supporting offer the unit price difference will be Rs. 3,000/- to 3,500/- per unit price.

To avoid any confusion, members are requested to meet on 01-08-2009 at 11:00 AM at PEMA office Lawrence Road Lahore. And bring along tender documents for MEPCO & HESCO Tenders.

Minutes of the Meeting dated 21-08-2009 – Annex AE

Terms and Conditions

- *The above quantities could only be increased by 5-6 Nos.*
- *Supporting offer will be higher by Rs.1500-2000.*
- *The original bids forms will be seen by members two days prior to tendering.*
- *Comparison/adjustment will be made from the upcoming tenders for T-05.*

Minutes of the Meeting dated 26-02-2010 – Annex AF

Following was discussed and agreed in the meeting:

- *Before deciding for QESCO and TESCO tenders, the technical matter with WAPDA (MI) and D & S are to be resolved.*
- *A Chief Executive meeting is to schedule in 1st week of March, 2010 to solve the irregularities of forum members.*
- *All manufacturers will write letter to QESCO and TESCO for four (4) week of extension in tender due date.*

Draft Letter dated 26-02-2010 faxed from PEMA office for Members to Manager Material Management TESCO & QESCO –

Subject: Tender for 25KVA & 50 KVA Distribution Transformers.

Due to fluctuation in raw material prices and floating US \$ rates, we are unable to get confirmed prices from our sub-suppliers, therefore, we request you to please extend the tender opening date for four weeks, enabling us to submit our competitive offer.

Minutes of the Meeting dated 14-05-2011 – Annex AG

During this meeting it was mutually agreed and decided that:-

- 1- *Members will apply for extension in opening date due on 18-05-2011 of HESCO tender on the basis of upcoming budget and its clarification.*
 - 2- *TESCO tender due on 30-05-2011*
 - *Prices will be communicated in due course of time by T-08 and T-05 respectively.*
 - 3- *All the members should write letter to DISCOs for cancellation of international tenders as per draft letter communicated by email today (14-05-2011).*
- 5- *MEPCO rate clarification meeting called by MEPCO on 17-05-2011*
- *Members who have allocation in MEPCO will write letters to MEPCO confirming the rates according to GM (C &M) letter for the quantity allocated.*

6- For private customers, member should refrain from indicating prices over telephone and / or verbally. The prices if conveyed members should ask for the NOC and thereafter indicate / quote prices D & S +5,000/- to 10,000/- depending upon the rating to avoid any market repercussions.

46. Distribution Transformers Manufacturers also appear to have formed a transformer forum. This forum is used to discuss and make strategy for tenders invited by the DISCOs for procurement of different categories of transformers including power, distribution and pad mounted transformers. SOPs have also been laid down for the working of transformer forum and members are reprimanded on deviating from the established practice of forum and SOPs.
47. Regular meetings are held among the forum members to decide the price and share allocation of the members for different categories of transformers to be supplied to DISCOs. Members strictly adhere to prices and conditions agreed at the transformer forum. Share allocation decided at forum remains unchanged and members cooperate with each on such decisions and also refrain from any activity damaging the interest of the forum.
48. Members of the forum acknowledge in their meetings that their performance and achievements in DISCOs' tenders came as a result of better interaction and understanding between the members during the forum's meetings which also avoided negative selling. A few members who deviated in handling tenders in contrary to the agreement made in the forum were warned that such activities should be avoided to safeguard further disturbances and better understanding / working of the forum.
49. In the meetings called to discuss the tenders, members are required to bring along their tender documents. Tender forms duly filled and signed are shared by members before submitting their bids. To show a competitive bidding, supporting bidders submit cover bids, and the price to be quoted by such supporting bidders is decided in the forum meetings.
50. More interestingly for private customers, members are required to refrain from indicating prices over telephone and / or verbally. The prices if conveyed members are required to ask for the NOC and thereafter indicate / quote prices D & S +5,000/- to 10,000/- depending upon the rating to avoid any market repercussion.
51. Apart from the abovementioned minutes of meetings, working and comparative statements of tenders attached at **Annex AH** prove collusive activities by the manufacturers to rig the bids in tenders called by different DSICOs in different periods of time. Description of tenders is given as follows:

- a. GEPCO, PESCO, MEPCO and QESCO Tenders due on 24-07-2009, 28-07-2009, 29-07-2009 and 31-07-2009 respectively.
- b. GEPCO Tender No. ADB-01-2009 due on 03-08-2009.
- c. QUESCO Tender No. ADB-01-2009 due on 07-08-2009.
- d. PESCO ADB Tender due on 10-08-2009.
- e. MEPCO Tender No. ADB-01-2009 due on 17-08-2009.
- f. MEPCO Tender No. T-0609-96 & 0609-97 due on 10-02-2010.
- g. MEPCO Tender No. 0608-85 opened on 27-05-2009.
- h. MEPCO Tender No. 0608-84 opened on 27-05-2009.
- i. HESCO Tender No. 468 & 469/2009 opened on 04-08-2009.
- j. GEPCO Tender No. 24&25 opened on 23-08-2010.
- k. GEPCO Tender No. 83 due on 20-04-2010.
- l. IESCO Tender No. 54 due on 31-10-2007.
- m. LESCO Tender No. 1015 opened on 12-04-2010.

52. Moreover, **Annex AI** gives a detailed analysis of share allocation of different categories of transformers among the manufacturers and orders received, tenders finalized and carried over against such share allocation for the period of 2007-08 and 2009-10.

53. On the basis of information and documents available on record a, *prima facie*, collusive arrangement among the Distribution Transformer Manufacturers particularly in terms of offering a pre-determined price and quantity is substantiated. Offering a pre-determined price and quantity in bids and taking other collective decisions regarding tendering by the aforementioned manufacturers appear to have the object of preventing, reducing, restricting or distorting competition in the market of public procurement of different categories of energy meters. Therefore it is concluded that Distribution Transformer Manufacturers have entered into an arrangement that, *prima facie*, violates Section 4 (1) read with Section (2)(a), (b) & (e) of the Act.

Collusion in LT Current Transformers (LTCTs)

54. In another category of transformers i.e. LT CT, abundant evidence has been recovered during the inspection of FICO and PEL offices which leaves no room for doubt that the manufacturers have colluded to fix the price and divide the share allocation in different DSICOs tenders. Impounded material has revealed substantial details of bid rigging in tenders for LT CTs by the following manufacturers who are hereinafter collectively referred to as the 'LT CT Manufacturers'.

- a. PEL
- b. FICO
- c. Elmetec
- d. Metalex
- e. Baig Electrics; and
- f. Siddique Sons Engineering

55. The LT CT Manufacturers regularly and periodically hold their meetings to discuss the tender documents issued by WAPDA /DISCOs for procurement of LT CTs, share allocation among the members and price to be quoted by the participating members. From the documents impounded from FICO office, price and the allocation of quantity of the LT CTs against the tenders issued by WAPDA/DISCOs appears to have been agreed upon/decided for the year 2007-2011 in the following manner: **Annex AJ**

a. FICO	22.25%
b. PEL	26.70%
c. Elmetec	20.47%
d. Metalex	11%
e. Baig	19.58%

56. Aforementioned share allocation remained valid till 2011 and was revised on 19 March, 2011. This time a new member, Siddique Sons Engineering, was also added. However, this revised share allocation is valid till 15 September, 2011. Thereafter, Siddique Sons Engineering's share will be 10% and all others 18% and this allocation will be valid till 15 September, 2012. Revised share allocation as per agreement of the LT CT Manufacturers is given below:

Meeting of CT Manufacturers dated 19-03-2011 – Annex AK

1. New Share Allocation: Valid from 15-03-2011

<i>PEL</i>	<i>19%</i>
<i>FICO</i>	<i>19%</i>
<i>ELMETEC</i>	<i>19%</i>
<i>BAIG</i>	<i>19%</i>
<i>MLTX</i>	<i>19%</i>
<i>SSE</i>	<i>5%</i>

2. *The above share allocation is valid till 15-09-2011. Thereafter SSE share will be 10% and all others 18%. This will be valid till 15-09-2012.*

3. *After 15-09-2012 share of all members will be equal i.e. 16.66%.*

PEL, FICO, ELMETEC, BAIG ELECTRIC, METELEX, SSE

57. Documents impounded comprised communications between the parties including fax/letters and minutes of meetings, different tender documents issued by WAPDA /PEPCP/DISCOS and invoices issued to private concerns/parties. The electronic data of FICO and PEL was also examined. Followings are excerpts

taken from the material impounded from PEL office which highlight the collusive activities LT CT manufacturers:

Fax / Letter dated 05-03-2011 – Annex AL

A meeting of CT manufacturer consortium will be held on 07-03-2011 at 11:30 AM in the office of FICO HI-TECH to discuss & decide future action regarding new instructions of MI about Testing of samples of CT's against each call at PCSIR.

- 1. Sadiq Muneer / Abdul Waheed Butt
PEL*
- 2. Rehna Sadiq
Metelex*
- 3. Rehmat Ali
Elmetec*
- 4. Shahid Baig
Baig Electric*

Fax / Letter dated 17-03-2011 – Annex AM

A meeting of CT manufacturer consortium will be held on 19-03-2011, Saturday at 10:00AM in the office of PEL.

Agenda for Meeting:

- a. Allocation of LESCO Tender.*
- b. Allocation of share to SS ENGG.*
- c. Price decision regarding tenders submitted.*
- d. MI inspection problems & PCSIR fees.*

- 1. Sadiq Muneer / Abdul Waheed Butt
PEL*
- 2. Rehna Sadiq
Metelex*
- 3. Rehmat Ali
Elmetec*
- 4. Shahid Baig
Baig Electric*
- 5. Sehzad Qureshi
SS Engg*

Fax / Letter dated 02-04-2010 – Annex AN

A meeting of LT CT manufacturers will be held on in FICO HI-TECH (Pvt.) Ltd, Lahore office on 03-04-2010,

Saturday, at 2:30PM to discuss share distribution & other matters of mutual interest. The Chief Executives of all member companies are requested to attend in time.

Engr. Azeem Ahmed

Fax / Letter dated 12-04-2011 from FICO – Annex AO

A meeting of CT manufacturer consortium will be held on 14-04-2011, Thursday at 10:15AM in the office of PEL.

Agenda for Meeting:

- i. Allocation of IESCO & MEPCO Tenders*
- ii. Any other matter of importance.*

1. Sadiq Muneer / Abdul Waheed Butt

PEL

2. Rehna Sadiq

Metelex

3. Rehmat Ali

Elemetec

4. Shahid Baig

Baig Electric

5. Sehzad Qureshi

SS

Engg

Letter dated 10-05- 2010 – Annex AP

Reference: *PESCO letter No. 18542-43 10-05-2010 against tender No. CEx/M (MM)/66 opened on 29-04-2010 for the supply of following LT CT's*

The following discounted prices to be quoted against subject PESCO letter.

<i>LT CT (400/5A)</i>		<i>LT CT</i>
<i>(200/5A)</i>		
<i>PEL</i>	<i>Rs.2,200/-</i>	
<i>Rs.2,930/-</i>		
<i>ELMETEC</i>	<i>Rs.2,415/-</i>	
<i>Rs.2,820/-</i>		
<i>*FICO</i>		<i>Rs.2,450/-</i>
	<i>Rs.3,100/-</i>	

M/s FICO shall submit the revised rates only, if they receive request letter from PESCO.

PEMA Co-coordinator

Minutes of Meeting dated 22-05-10 – Annex AQ

*Negotiation rates for HESCO/PESCO/LESCO/FESCO
Tenders already opened*

<i>Ratio</i>	<i>Rates</i>
<i>100/5</i>	<i>3350.00</i>
<i>200/5</i>	<i>2500.00</i>
<i>400/5</i>	<i>2500.00</i>
<i>800/5</i>	<i>1450.00</i>

*Supporting Bidders should keep their rates higher by at least Rs.100
FICO, Elemetec, Metalex, PEL, Baig Electric*

58. From the evidence quoted above, it appears that LT CT Manufacturers have formed a LT CT consortium. Members of consortium have regular meetings to discuss matters of mutual interest relating to tenders invited by DISCOs for procurement of LT CTs which particularly include price to be quoted and allocation of share. To show competitive bidding, supporting bidders also participate in the tendering process and the price to be quoted by them is also determined by LT CT Manufacturers' consortium.
59. Apart from the abovementioned fax/letters and minutes of meetings, working and comparative statements of tenders attached at **Annex AR** evidently show share allocation and price colluded by LT CT Manufacturers in tenders called by different DSICOs in different period of time. Description of tenders is given as follows:
- FESCO Tender No. 75 due on 07-05-2010.
 - LESCO Tender No.109 due on 26-03-2011.
 - MEPCO Tender No. 122 due on 19-04-2011.
60. Moreover, evidence recovered from FICO's electronic data **Annex AS** gives a detailed analysis of share allocation of LT CTs among the manufacturers in different tenders due during the years 2010 and 2011.
61. Documents impounded from FICO office it also reveal that the prices of LT CTs offered through quotations to different private parties are different and lower than the price of LT Current Transformers quoted/offered through tenders to

WAPDA/DISCOs. The detail of prices offered to private parties and WAPDA is during the last quarter of year 2009 are as follows:

S.No	Description of store	Period of Supply	Sale rate for Wapda	Sale rate for private parties
01	LTC.T.100/5	last quarter of 2009	Rs.3350	Rs.2,400/(Farooq & co Lhr)
02	LTC.T.200/5	Do	Rs.2,500/	Rs.2,240/(Farooq & co Lhr)
03	LTC.T.200/5	Do	Rs.2,500/	Rs.2,240/(Waseem electric & co Lhr)
04	LTC.T.400/5	Do	Rs.1,900/	Rs.1,760/(Hameed automation & co Lhr)
05	LTC.T.400/5	Do	Rs.1,900/	Rs.1,760/(City traders Lhr)
06	LTC.T.400/5	Do	Rs.1,900/	Rs.1,760/(Farooq & co Lhr)

62. From the above table it appears that LT CT manufacturers are therefore involved in raising the prices of LT Current Transformers artificially with the result to increase /raise the cost of procurement. **Annex AT**

63. On the basis of information and documents available on record, it appears that collusive arrangement among the LT CT manufacturers by offering a pre-determined price and quantity is substantiated. Bids submitted by all the LT CT Manufacturers//bidders appear to have the object of preventing, reducing, restricting or distorting competition in the market of public procurement of the LT current transformers, *prima facie*, in violation of Section 4(1) read with Section 4(2)(a), (b) & (e) of the Act.

Cartel Warnings

64. It is interesting to note that manufacturers have been warned against their collusive activities by procuring agencies in the past. However, totally ignorant of the warning these manufacturers have carried on with their cartelization. Followings are few excerpts taken from the impounded material which clearly show that manufacturers were aware of what amounts to collusion and were also informed by the procuring agencies about their collusive activities:

HESCO letter dated 08-08-06 to Syed Bhais, PEL and Escorts regarding Tender No.227 for supply of Static Single Phase 2-Wire Energy Meter opened on 28-02-06. – Annex AU

However it was really astonishing to note that all of you remained active player of cartel formation and on both occasions identical rates were quoted by all three firms. Please be very clear that formation of cartel is prohibited under law of land.

Be known that transparency is not only binding for purchaser but is equally applicable to you as well. Please be fair and always quote your rock bottom prices individually in the forthcoming tenders of HESCO as we are still open.

65. From impounded material a document was recovered that has been faxed from Transfo Lahore on 05 October, 2009. This document, **Annex AV**, entails the detailed evaluation of following tenders for purchase of transformers by the procuring agency:

- a. Tender No. 27 opened on 19-09-09 for purchase of 900 Nos. 25 KVA Distribution Transformers
- b. Tender No. 28 opened on 19-09-09 for purchase of 450 Nos. 100 KVA Distribution Transformers
- c. Tender No. 33 opened on 28-09-09 for purchase of 300 Nos. 200 Pad Mounted Distribution Transformers

66. In the evaluation report it has been categorically stated that bidders in the above mentioned tenders have “*made a cartel/collusive bidding offering similar rates and distribution of tender quantity among them which is violation of PPRA rules and against sanctity of the tender*”. In the end the evaluation report recommends that:

...in order to avert the prevailing trend of cartel/collusive bidding it is proposed:

- a. *To scrap the subject tenders due to cartel and other higher rates and to invite fresh tenders for purchase of requisite material to meet the urgent requirement of field formation.*
- b. *To issue notices to the firms involved in cartel/collusive bidding to refrain from making cartel.*

67. It is also surprising to note that manufacturers kept a keen observation on the activities and enforcement powers of the Commission. In the impounded material an important news paper clipping was found regarding amendment in the Act to add a new provision to take criminal action against cartel members. **Annex AW**

Role of Procuring Agencies

68. The Enquiry Committee has come across documents which indicate that officials of PEPCO, DISCOs and Distribution Transformer Manufactures met and deliberated on prices and quotas for the supply of low-loss distribution transformers. Some documents are highlighted ahead.

69. A letter issued by GM (C&M) PEPCO on 2 May 2011 mentions that a meeting of PEPCO, DISCOs and Transformer Manufacturers regarding procurement of low loss transformers was chaired by MD PEPCO on 28 April 2011 wherein it was decided that 1.5 percent discount would be given by all Transformer Manufacturers on the estimate given by NTDC. The relevant portion reads as follows:

PEPCO Letter dated 2 May 2011. Annex AX

A meeting was chaired by Managing director PEPCO on 28.04.2011 held between CEOs of all DOSCOs and transformer manufacturers to discuss and decide the issues relating to low loss transformers to be procured under amendment No. 5 dated 03.06.2010 to specification No. DDS-84: 2007. I have been directed to intimate that the decisions taken in the meeting may please be implemented in letter and spirit. Summary of the decision is given as below:-

1) A discount of 1.5% will be applied to the prices of distribution transformers worked out by Chief Engineer (D&S) NTDC and circulated vide his letter No. 1064-47/CEDS/CAP dated 18.02.2011. The discount will be application to prices of all ratings.

2) The DISCOs will place orders of 100% of the quantities for which tenders have been floated.

70. From the extract reproduced above it appears that DISCOs have collectively been involved in discussion with Distribution Transformer Manufacturers for obtaining discounted prices for low loss transformers. Where such conduct facilitates collusion among the manufacturers, it also indicates alarming behavior on part of the DISCOs which may have adverse repercussions on competition in the market of distribution transformers. This observation however does not in our view preclude, or condone, the collusive behavior of various electric power equipment manufacturers as in the given facts and circumstances the aforementioned violations appear to be independent of such conduct which is restricted to only low loss transformer.

FINDINGS

71. In view of foregoing it appears that there is, *prima facie*, cartelization in the market of electric power equipment. PEMA has facilitated the collusion among its members by providing a forum to discuss and form strategies regarding collusive bidding in, *prima facie*, violation of Section 4(1) read with Section 4(2) (a), (b) & (e) of the Act.

72. Moreover, Switchgear Manufacturers have been involved in bid rigging in tenders floated by different DISCOs for procurement of switchgear, by allocating the share, *prima facie*, in violation of Section 4(1) read with Section 4(2) (b) & (e) of the Act.
73. Further, Energy Meter Manufacturers have been involved in bid rigging in tenders floated by different DISCOs for procurement of different categories of meters, by fixing the price and dividing the quantity, *prima facie*, in violation of Section 4(1) read with Section (2) (a), (b) & (e) of the Act.
74. Furthermore, Distribution Transformer Manufacturers have been involved in bid rigging in tenders floated by different DISCOs for procurement of different categories of transformers, by fixing the price and dividing the quantity, *prima facie*, in violation of 4(1) read with Section 4(2) (a), (b) & (e) of the Act.
75. Likewise, LT CTs Transformer Manufacturers have been involved in bid rigging in tenders floated by different DISCOs for procurement of LT CTs, by fixing the price and dividing the quantity, *prima facie*, in violation of 4(1) read with Section 4(2) (a), (b) & (e) of the Act.
76. The obstruction caused by the undertakings during the inspection and denying full and free access to documents at the initial stage can be proceeded against under Section 38 of the Act as not providing full and free access to documents is in contravention of Section 34 and 35 of the Act. The Commission may proceed separately in this matter under the law.

RECOMMENDATIONS

77. 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 the bid rigging by electric power equipment manufacturers in respect of different categories of electric power equipment has, without doubt, resulted in economic harm for the public, who ultimately bear the costs as taxpayers or consumers.
78. It is therefore, recommended that it is in the public interest to initiate proceedings against PEMA, Switchgear Manufacturers, Energy Meter Manufacturers, Distribution Transformer Manufacturers, and LT CT Manufacturers under Section 30 of the Act for the violation of the provisions of the Act as detailed above.

79. Furthermore the involvement of DISCOs with Distribution Transformer Manufacturers on discussions regarding pricing of low loss transformers raises competition concerns and it is recommended that the DISCOs and PEPCO may be summoned for hearing to explain to the Commission such behavior to determine the future course of action in this regard.

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