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Experts term cartels worst infraction of competition laws

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ISLAMABAD: The cartels were the worst competition infringement that resulted in an estimated price increase of 20-40 percent, while the estimated percentage of worldwide cartels in public procurement bidding is 25 percent, international competition law experts said here on Sunday.

According to Manuel Sebastião, the President of Portuguese Competition Authority, a well-functioning market economy and business-friendly economic policies needed an effective competition component in their economic policy toolkit.

In his presentation on 'Detecting Cartels: Investigative Techniques', during the International Conference, Sebastião quoted CCP Chairperson Ms Rahat Kaunain Hassan as saying: "If you are pro-business, you have to be pro-competition," adding that fostering trade and investment, hence employment and growth, required a well-designed legal framework for competition; forceful antitrust action by the competition authority, specifically against cartels and bid-rigging and rulings by the courts in their judicial review that ensure the rule of law on competition matters.

He cited the example of Portugal where reforms had been introduced for effective enforce-

ment of competition law, for example, introduction of a new competition law, strengthening of the Portuguese Competition Authority and, new specialised Court of Competition, Regulation and Supervision.

US competition experts appreciated the role of CCP under the guidance of Rahat Kaunain Hassan. They said that over the past three years, CCP had taken strict actions against powerful cartels despite pressure from influential groups and lobbies.

Another panelist, John K Daina, Senior Economist, Enforcement Division, Competition Authority of Kenya, said that cartels undermined the competitiveness of a country's economy.

"Unchecked cartels raise the cost of doing business, reduce firms' incentive to become more efficient and innovate, render consumers to pay higher prices without any extra benefits, while firms earn higher profits for less effort," Daina said.

Fernando M Furlan, former president of the Brazilian Competition Authority, who discussed the importance of leniency in busting cartels, said: "To date, as many as 20 leniency agreements have been concluded and many cartels sanctioned in Brazil," Furlan said.

Terming leniency the main instrument of detection and fight against cartels, Furlan said that

leniency had proven to be extremely effective in detecting and busting cartels in his country and other developing countries also could benefit from this important provision.

Prof John M. Connor of Purdue University gave a presentation on 'Price Effects of International Cartels in Markets for Primary Products' in which he analysed the extent of price changes induced by privately organised international cartels that monopolised markets for primary products, besides examining the enforcement response.

Summing up the session, CCP Chairperson Rahat Kaunain Hassan said that cartels were termed a major drain on the world economy and leniency program seemed to be the single most important tool to be used by the competition agencies to detect and dismantle cartels.

"It is a concession granted to a cartel member who admits the contravention and also provides critical evidence of the alleged or otherwise cartel conduct of the accomplices and commits to abandon such behaviour.

"CCP is one of 110 competition agencies all over the world which have leniency programs in place."

She mentioned CCP's landmark decision - leniency granted to Siemens - to break cartels in switchgear and transformer markets.

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Commercial import of Iron ore

PSM board all set to qualify tender today

ISLAMABAD: Pakistan Steel Mills (PSM) Board of Directors (BoD) is reportedly all set to clear an iron ore commercial import tender for five years with one company on Monday (today), well informed sources told Business Recorder.

Documents, which have been circulated amongst the Board members and a copy of which is available with this scribe, suggest that Board Price Committee (BPC) considered the technical committee's report wherein they considered the offers of M/s Ehya Sephan Mining and Industries Complex Co. Iran and ICOIC Iran and Cargil International Singapore as technically qualified and accepted them for commercial opening whereas offer of M/s CCBMM was rejected on technical grounds.

The committee observed that documentation of the bidders as per tender requirement have not been strictly taken into consideration or their linkage is missing in the files presented before the BPC.

According to the documents,

BPC observed that documentation are required to be linked strictly in accordance with the tender terms and conditions or proper justification should be recorded for any relaxation by accepting alternate documents.

The committee accordingly called the representatives of the qualified bidders i.e. M/s Ehya Sephan Mining & Industries Iran, represented by Shahid Jaffery, M/s Cargil International represented by Nasir Abbasi and Fawad Aftab and M/s ICOIC represented by Nishat Ahmad.

They were apprised that the BPC has recommended that all the documents are required to be linked as per tender terms and conditions and if some are not available in the files, they should be obtained from relevant authorities and presented duly linked before the BPC in its next meeting.

The situation of participation in long term contracts favours only one party whereas parties from Iran will not be able to perform as one party from Iran has yet to receive more than Rs 1.5

billion on account of unsettled receipt of iron by PSM in the past. Moreover, no Pakistani bank is willing to open the LC for Iran to import Iron ore due to sanctions.

This leaves only one party for long term 7th generation agreement which is against the spirit of fair trade and competition. The situation also calls for intervention of Competition Commission of Pakistan (CCP) if PSM favours award of 7th generation agreement to one company, said an insider.

TIP in the past had also invited the attention of PSM for fair tuning the conditions of the contract otherwise it apprehends customised structuring of tender documents in favour of a certain company.

A source close to PSM affairs said that the provisional pricing will become basis of favouring single party and for some or other reason one company may supply iron ore from any destination according to its profit making thrust.

BPC in its last meeting had strongly opposed the deal. The

committee was under pressure from management to approve the 7th generation agreement but the committee did not succumb to the pressure of management and categorically told the management that circumstances of incomplete documentation and approval appear to be favouring a single party is against fair trade practices.

They also said that in near future Boards and committees are likely to be dissolved and new committees will be formed as per new rules of corporate governance with new TORs. Therefore, the matter should be left for decision to the new committee and new board, the sources maintained.

The Board will also replace two members i.e. Mirza Islam Baig, Engineer Abdul Jabbar Memon with Ali Raza Ghee Wala and Kalbe Abbas Dharmsey. The name of Dr. Mahreen Razzaq Bhutto, ex-MNA will be deleted from the Board as she has ceased to hold the office after completion of tenure of National Assembly. —
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