



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
NOTICE OF HEARING ISSUED TO**

**TRADING CORPORATION OF PAKISTAN (PRIVATE) LIMITED
&
PUBLIC NOTICE**

(FILE NO. 3(31)/D.D (L)/TCP/CCP/2010)

Dates of hearing: February 12, 2010

Present: Mr. Khalid A. Mirza
Chairman

Mr. Abdul Ghaffar
Member (Cartels, M& T.A)

Ms. Rahat Kaunain Hassan
Member (Legal)

**On behalf of
Trading Corporation of Pakistan:** Mr. Saeed Ahmad Khan, Chairman
Mr. Shahzad Akhtar, GM (Import)
Mr. Muhammad Sadiq, GM (Dispatches
Operation Division)
Mr. Shahid N. Hassan, GM (Legal)
Mr. Mazhar Hussain, Advocate

Stakeholders & Public at large: Syed Amjad Ali, Sheikh Ali Baakza on
behalf of Al Khaleej Sugar, Mr. Jawad Tariq
(Independent Consultant), Mr. Samee
Anwer on behalf of Reliance Company, Mr.
Mujahid Bashir, R. Pak Trading Company
and Mr. Sohail Z. Ali Khan.

ORDER

1. The Competition Commission of Pakistan (hereinafter referred to as the 'Commission') took notice of the news items, appearing in the *daily Business Recorder* on January 19, 2010, January 22, 2010 & January 28, 2010 and appointed Enquiry Officers pursuant to the provisions of sub-section (2) of Section 28 of the Competition Ordinance, 2009 (the 'Ordinance') to verify as to whether in terms of the news reports Trading Corporation of Pakistan (Private) Limited (the 'TCP') through its Tender terms for the import of white sugar has failed to provide level playing field and equal opportunity to suppliers/parties of all origins for the import of 5,00,000/- MT of sugar, thereby preventing, reducing and restricting competition in the relevant market in violation of the provisions of Section 3 and/or 4 of the Ordinance.
2. Subsequent to the initiation of Enquiry under the Ordinance, the Commission received a letter from Mr. Jawad Tariq on February 3, 2010, and another letter on February 09, 2010, wherein irregularities and lack of transparency in the tendering process of TCP was complained about.
3. The Enquiry Officers submitted their Preliminary Enquiry Report dated February 09, 2010 before the Commission, wherein it was pointed out that TCP issued (6) six tenders between the periods starting from December 31, 2009 to January 20, 2010, for procurement of sugar totalling 500,000/- tons, the details of which are as follows:

Sr. No.	Tender Ref#	Quantity	Date of Publication	Date of Submission	Date of Opening
01.	Imp/Sugar/9-14/09	150,000 MT	31-12-09	06-02-2010	06-02-2010
02.	Imp/Sugar/9-16/2010	150,000 MT	08-1-2010	13-02-2010	13-02-2010
03.	Imp/Sugar/9-17/2010	50,000 MT	13-01-2010	15-02-2010	15-02-2010
04.	Imp/Sugar/9-18/2010	50,000 MT	15-01-2010	20-02-2010	20-02-2010
05.	Imp/Sugar/9-19/2010	50,000 MT	18-01-2010	22-02-2010	22-02-2010
06.	Imp/Sugar/9-20/2010	50,000 MT	20-02-2010	27-02-2010	27-02-2010

4. The Enquiry Officers in their preliminary Enquiry Report have pointed out that certain clauses of the Terms and Conditions of Tenders were found to be potentially of concern, *inter alia*, i) Clause 2 wherein Solution Colour ICUMSA Unit Max. was fixed at 120, Sulphur Dioxide mg/kg, Max. was fixed at 15.0 ppm and Copper mg/kg, Max. was fixed at 2.0, ii)

Clause 6 wherein the packing bags dimensions were given, iii) Clause 10, which provides that the bids were to be submitted personally and no bid through courier or fax shall be accepted, iv) Clause 15 where minimum quantity of shipment was fixed and then time period for subsequent shipments were also fixed, iv) and Clause 19 wherein it is provided that transshipment is not allowed and no other cargo is to be shipped along with the sugar.

5. The Enquiry Officers in the Preliminary Enquiry Report recommended to maintain *status quo* till the final enquiry report is issued keeping in view the urgency of the matter and the fact that *prima facie* there is likely to be a violation of Section 3 of the Ordinance. Owing to the fact that the tender terms *prima facie* seemed to exclude competitors from the tendering process and was likely to result in import of sugar at a higher price which could adversely impact the consumer and the public at large, therefore, the Commission issued a Notice of hearing under Section 30 read with Section 31 & 32 of the Ordinance to TCP as to why an appropriate action may not be taken under the Ordinance. In addition to Notice of hearing to TCP, a Public Hearing Notice was also published in the News paper, all parties concerned were invited to attend the hearing for due participation if so desired at their end and to provide assistance to the Commission in this regard.
6. Hearing in the matter was held today, Saeed Ahmad Khan, Chairman, Shahzad Akhtar, GM (Import), Muhammad Sadiq, GM (Dispatches Operation Division), Shahid N. Hassan GM (Legal) and Mr. Mazhar Hussain, Advocate appeared on behalf of TCP, Syed Amjad Ali, Sheikh Ali Baakza on behalf of Al Khaleej Sugar, Mr. Jawad Tariq, Mr. Sohail Z. Ali Khan, Mr. Samee Anwer on behalf of Reliance Company, Mr. Mujahid Bashir, R Pak Trading Company.
7. At the outset, we must record our appreciation for the team representing the matter on behalf of TCP, lead by the Chairman TCP himself, who explained and argued the matter ably and provided thorough assistance to the Commission in the matter. We are pleased to record that owing to the positive and forthcoming approach of the TCP team all parties present were able to resolve the concerns in relation to the terms and conditions of the tenders, which *prima facie* were preventing, restricting or reducing competition in the relevant market.

8. After hearing all the concerns expressed by the Commission and the objections raised by the parties present *vis-a-vis* the terms and conditions of the tender TCP has agreed to the following:

- The tender to be opened on the February 13, 2010 has been merged with the tender scheduled for February 15, 2010. Accordingly, the quantity of sugar for tender scheduled for February 15, 2010 shall be enhanced to 2,00,000/- MT and shall now be opened on February 17, 2010;
- The conditions in clause 15(a) of the Terms & Conditions for the tenders relating to shipment will be amended, which shall read as follows:

“First shipment of at least 12,500 MT 5% MOLSO within three (3) weeks (excluding voyage time) from the date of opening of L/C and subsequent shipments within the period of the contract and in a manner so as to ensure no less than the minimum shipment i.e. 12,500 MT 5% MOLSO on average per week.”

- The terms and conditions of the Tenders will be amended to allow containerized shipment as an option on established international terms and conditions;
- Transshipment in the case of containerized shipment will be allowed in the terms and conditions of the tenders.

9. Keeping in view the above, TCP is directed to issue a corrigendum in terms of the above in two news papers of national circulation, tomorrow positively and to take all necessary actions in this regard. Also, in view of the foregoing, we are of the considered view that the concerns raised by the Enquiry Officers in the Preliminary Enquiry Report and the objections taken by the parties present stand substantially addressed, therefore, further enquiry in this matter is not warranted.

10. In terms of the above, the hearing notice issued to TCP is hereby disposed of.

(KHALID A. MIRZA)
CHAIRMAN

(ABDUL GHAFFAR)
MEMBER (C, M&T.A)

(MS. RAHAT KAUNAIN HASSAN)
MEMBER (LEGAL)

Islamabad the February 12, 2010