



BEFORE THE

COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

M/S Fecto Belarus Tractors (Pvt.) Limited Vs. Shahzad Trade Links

(File No.22/Dir(M&TA)/Minsk/CCP/09)

Date of hearing: 18 May 2010

Present: Mr. Abdul Ghaffar
Member (Cartels, Monopolies & Trade Abuses)

On behalf of

Fecto Belarus (Private) Limited: *Nemo*

Shahzad Trade Links: Mr. Amer Raza Naqvi
Advocate

ORDER

1. This order will dispose of the complaint filed by M/s Fecto Belarus Tractors (Pvt.) Limited (hereinafter the “Complainant”) against M/s Shahzad Trade Links (hereinafter the “Respondent”) pursuant to an order dated 16 March 2010 passed by the Appellate Bench of the Competition Commission of Pakistan (hereinafter the “Commission”) wherein the matter was remanded to this Bench for deciding afresh after providing an opportunity of hearing to the concerned parties.
2. A complaint was filed by the Complainant on 11 August 2009 before the Commission against the Respondent assailing the legality of an exclusive agency agreement executed between the Respondent and M/s Minsk Tractor Works, under section 4 of the Competition Ordinance, 2009. It was also alleged in the complaint that by virtue of its exclusive agency agreement the Respondent has captured the entire market of Belarus Tractors in Pakistan and is capable of imposing its own terms on the Government of Pakistan for the purchase of tractors by the farmers under the Benazir Tractor Scheme.
3. An application for interim relief was filed under section 32 of the Ordinance by the Complainant along with the complaint seeking interim order restraining the Respondent from collecting monies from third parties under the Benazir Tractor Scheme. Application was fixed for hearing and notices were issued to the parties. However, the Respondent filed a writ petition (C.P.No.D-1822/2009) before the Hon’ble Sindh High Court challenging the action taken by the Commission under section 32 of the Ordinance. The Hon’ble Sindh High Court was pleased to pass an order on 27 August 2009, directing the Commission to conduct an inquiry before proceeding under section 32 of the Ordinance to grant an interim order.
4. Before I proceed further, I would like to give a brief on the status of the Competition Ordinance. The Competition Ordinance, 2009 was promulgated on 26 November 2009 and was given effect on and from the 2 October 2007¹. Competition Ordinance, 2009 lapsed after four months and was re-promulgated by the President on 18th April 2010. Section 60 of the Competition Ordinance, 2010 validates all the actions taken, orders passed and proceedings initiated by the Commission on or after 2 October 2007². The Complainant filed the complaint in the instant matter under the Competition Ordinance, 2009. Proceedings on the complaint and order by the Learned Appellate Bench of the Commission were passed under the Competition Ordinance, 2009. However, soon after the remand order, the Competition Ordinance, 2010 came into force which saves all the previous proceedings taken by the Commission under section 60. In view of aforementioned, this complaint is being decided in accordance with the provisions of the Competition Ordinance, 2010 (hereinafter the “Ordinance”).

¹ Section 1(3) of the Competition Ordinance, 2009

² Section 60 of the Competition Ordinance, 2010

5. It is pertinent to mention here that before passing of the order dated 27 August, 2009 by the Honourable High Court of Sindh, the Commission had already initiated a formal inquiry in the matter under section 37 of the Ordinance by appointing Ms. Nadia Nabi, Joint Director, as an inquiry officer on 13 August 2009. In compliance with the order passed by the Hon'ble High Court, an inquiry was completed and the inquiry officer submitted the Inquiry Report on 29th September 2009. The Inquiry Report appraised the procurement process of tractors under the Benazir Tractors Scheme and gave findings that the said scheme gives farmers discretion to select the make and model of their own choice from a wide range of tractors available in the market. Therefore, it cannot be said that the Respondent will be able to monopolise the Benazir Tractor Scheme and impose his own terms and conditions on the Government for the purchase of tractors by the farmers. The Inquiry Report concluded that:

“..... complaint is not substantiated with prima facie evidence. The Complainant has failed to establish its case against the Respondent. The exclusive agency agreement impugned in the complaint does not result in any, let alone any substantial foreclosure of market and also does not affect inter-brand competition in the market of tractors in Pakistan. Therefore, the Impugned Agreement is not restrictive of trade and does not constitute violation of section 4 of the Ordinance. During the course of inquiry it was noted that material facts were suppressed by the Complainant. In addition, the past conduct of the Complainant to pressurise MTW to sign an exclusive agency agreement through litigation and its current collusion with four other dealers to persuade MTW to sign agreements to import Belarus tractors shows mala fide intent of the Complainant.”

6. Based on the findings of the Inquiry Report, the complaint was dismissed. The Complainant and the Respondent were informed through a letter dated 2 October 2009 (hereinafter the “Impugned Order”) that the complaint failed to make out any violation of Chapter II of the Ordinance, therefore, proceedings under section 30 of the Ordinance could not be initiated. The Complainant being aggrieved of the Impugned Order filed an Appeal before the Appellate Bench of the Commission under section 41 of the Ordinance.
7. Hearing in the Appeal was held on 15 February 2010. The Learned Appellate Bench held that it would be in the interest of justice to provide the Appellate/Complainant an opportunity of hearing prior to passing an Order in the instant matter. Hence, the matter was remanded back to this Bench with a direction to give both the parties an opportunity of hearing and pass an Order afresh as deemed appropriate under the circumstances. The operative part of the order of the Learned Appellate Bench is reproduced hereunder for the sake of brevity.

Upon consideration of the entire matter, we are of the considered view that where a complaint has been filed and the findings of an enquiry do not indicate any prima facie violation and/or give any adverse findings against the complainant, it would be only fair and in accordance with the principles of natural justice that prior to the disposal of the

complaint an opportunity of hearing be given to the complainant.

8. Pursuant to the remand order passed by the Learned Appellate Bench, both Complainant and the Respondent were invited vide hearing notices dated 5 May 2010 to present their case before this Bench on 18 May 2010. However, the counsel for the Complainant requested vide letter dated 8 May 2010 to dispose of the complaint as not pressed in view of the fact that the impugned exclusive agency agreement was valid only till the end of 2009 and the same is no more effective. The Counsel also informed the Registrar of the Commission on the phone that he will not appear on the date of hearing. Therefore on the date of hearing only the Counsel of the Respondent appeared who was informed of the request made by the Complainant to withdraw its complaint which he did not have any objection.
9. In view of the request made by the Complainant, it is hereby ordered that the Complaint, filed herein on 11 August 2009 before the Commission is hereby dismissed as withdrawn.

ABDUL GHAFAR
MEMBER (C, M &TA)

Islamabad the May 28th, 2010