



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF  
COMPLAINT FILED BY  
M/S ELTEK VALARE A.S**

(FILE NO. 2(236)/AGR/EXM/REG/CCP/2011)

Present:

Mr. Abdul Ghaffar  
**Member (Cartels & Trade Abuses)**

**On behalf of  
M/s Eltek Valare A.S.:**

Nemo

**Mr. Imran Saeed:**

Nemo

**Mr. Mohammad Tariq:**

Nemo

## **ORDER**

1. This Order will dispose of the complaint filed by M/s Eltek Valere AS (hereinafter referred to as the '**Complainant**'); against the issuance of the exemption certificate dated 11-02-2011 to the Mr. Mohammad Tariq and Mr. Imran Saeed (hereinafter referred to as the '**Respondents**').
2. A complaint was filed by the Complainant on 18-05-2011 with the Competition Commission of Pakistan (the '**Commission**') assailing the issuance of exemption dated 11-02-2011 to the Respondents with respect to the Shareholder's Agreement dated 22-01-2007 (hereinafter referred to as the '**Shareholders Agreement**').
3. The Complainant stated that they in collaboration with the Respondents formed a company under the name of M/s Nextra Communications (Pvt.) Limited (now Eltek Valere Pakistan (Pvt.) Limited-hereinafter referred to as the '**Joint Venture**'). The Complainant was a majority shareholder i.e. 51% shareholder and the Respondents collectively were shareholders of 49% in the Joint Venture. However, the Respondents have not informed the Complainant, who was a majority share holder, regarding filing of the application 10-02-2011 to the Commission for exemption. The exemption was sought at their back and without intimation to them.
4. The Complainant in general alleged that the Respondents have acquired the exemption from the Commission by filling application dated 10-02-2011 which was not in conformity with the provisions of Regulation 4(1) of the Competition Commission (General Enforcement) Regulation, 2007 (the '**GER**') and the Schedule thereof. In specific it was alleged in the complaint that the requirement as prescribed under the Form in Para 1.5 has not been complied with; as they have not received any intimation from the Respondents regarding filing of the application for exemption. which read as follows:

*'Please provide details of the steps taken or to be taken to notify all the other parties to the agreement or conduct which is the subject of the application of whom the applicant(s) is aware that the application is being submitted. Indicate whether those parties have received a copy of the application and if so, whether confidential information was included in the copy of the application. If the applicant(s) considers that it is not practicable to notify the other parties of the application, please give the reasons why it is not practicable',*

Therefore, the exemption dated 11-02-2011 granted to the Respondents on their application dated 10-02-2011 is liable to be cancelled and/or withdrawn on the basis of being not in conformity with the provisions of Regulation 4(1) and the Schedule of the GER in addition to the fact that the Respondents have not brought true and actual facts in the knowledge of the Commission for seeking exemption.

5. Upon receipt of complaint, as provided under the provisions of Section 37 of the Act, the contents of the complaint as well as the annexure thereof were examined thoroughly. Thereafter the contents of the application dated 10-02-2011 for the exemption of Shareholders Agreement, filed by the Respondents was analyzed. It seemed that the application was filed on the form prescribed by Regulation 4(1) of the GER and under 1.5 part of the application, it was also mentioned that an intimation of filing of exemption was given to the Complainant. The courier receipts of TCS dated 11-02-2011 bearing the tracking no. 500905197 and the corresponding delivery report against the tracking number is available in the file, which provides that the notice was received on 16-02-2011 and was signed by I. Jakobsen.
6. In line with the principle laid down by the **Appellate Bench of the Commission vide its Order dated 16-03-2010, in the matter of Appeal filed by M/s Fecto Belarus Tractors**, it was deemed appropriate to provide an opportunity of hearing to the Complainant. Therefore, vide letters dated 23-06-2011 (through fax & Courier) the Complainant as well as the Respondents

was informed to attend the hearing scheduled on 28-06-2011 at the Commission's office at 11:00 am.

7. In response to the Commission's letter, the Legal Counsel of the Complainant requested via facsimile letter dated 27-06-2011 that their client is based in Norway and the record/documentation to which they refer could be voluminous, therefore, meeting may be rescheduled by allowing them three weeks time to take appropriate instructions from their client in the matter. The request seems appropriate therefore, in the interest of justice and in order to provide a reasonable and fair opportunity to the Complainant to make submissions, extension as requested by them was allowed and they were informed that next date of hearing will be intimated to them accordingly.
8. Thereafter vide letter dated 16-08-2011, sent thorough courier and fax, the Complainant was informed that hearing has been rescheduled and now fixed for 08-09-2011. The Respondents were also informed accordingly. In response to the aforesaid letter, Mr. Colin Howe, Chief Executive Officer of the Complainant informed the Commission vide facsimile letter dated 31-08-2011 that they do not wish to pursue the complaint and the same may be treated as withdrawn. It was also sated therein that they have instructed their advocates to write to the Commission in this regard. Consequently, the Counsel for the Complainant vide their letter dated 01-09-2011 seconded the stance earlier taken by the CEO of the Complainant and informed the Commission that their client no longer wishes to pursue the complaint, therefore, the same may be treated as withdrawn.
9. Even otherwise, as discussed in Para 5 *ibid* the Form as prescribed under Regulation 4(1) of the GER and specifically the requirement laid down in Para 1.5 of the exemption application has been complied with by the Respondents. Therefore, I find no reason why the request of withdrawal should not be accepted, consequently, in pursuance of the provisions of Regulation 21 of the

GER the request of withdrawal made by the Complainant vide letters dated 31-08-2011 and 01-09-2011 is accepted and their complaint dated 18-05-2011, filed with the Commission and against the Respondents is dismissed as withdrawn.

**ABDUL GHAFFAR**  
MEMBER (CARTELS & TRADE ABUSES)

**Islamabad the September 8, 2011**