



Full Leniency granted in Cartel case by Competition Commission of Pakistan *

Forum:

Competition Commission of Pakistan¹

Legislative Provisions referred:

1. Section 39 of the Pakistan Competition Act, 2010² incorporates provision for Leniency to an undertaking involved in the prohibited agreements.
2. Competition (Leniency) Regulations, 2007 provide detailed guidance regarding procedure, reduction of penalties and other matters associated with cases of leniency application in matters related to undertakings involved in the prohibited agreements.

Party to the Case:

M/s Siemens (Pakistan) Engineering Co. Limited³, the applicant for grant of leniency.

Facts of the Case:

The case related to bid rigging/collusive activities in the tenders called by electric power Distribution Companies (DISCOs) to procure switchgear and transformers from the manufacturers of electrical power equipment. CCP initiated a formal enquiry under Section 37(2) of the Act on information received from an informant against the prima facie collusive bidding. A team of officers of CCP was also constituted for inspection of the premises in

use of under the power granted to CCP by Section 34 of the Act in order to collect any further evidence regarding the suspected violations of the Act.

Findings of Enquiry Committee:

CCP appointed an Enquiry Committee to conduct an enquiry into the matter. The evidence impounded by the enquiry committee comprised, inter alia, email communications, minutes of meetings/decisions of manufacturers, data sheets, summaries and proposal documents. The Enquiry Report revealed a structured framework of collusive bidding in the public procurement of certain electric power equipment including switchgear, energy meters and transformers. CCP in light of the findings of the Enquiry Report initiated the proceedings under Section 30 of the Act and issued show cause notices to twenty four undertakings including the applicant.

Submissions by the Applicant:

The applicant approached the CCP on 20 October, 2011 to seek leniency. The applicant was first one to approach the Commission and submitted the Leniency Application along with documents as evidence of prohibited activity. The applicant contended that it has made full and true disclosure and provided the Commission with all the information, evidence and document available to it regarding the prohibited activity. The applicant also assured the CCP that it will refrain from further participation in the alleged activity and shall comply with the conditions imposed by CCP. Further, applicant submitted that it shall continue to cooperate genuinely fully and on a continuous basis.

*Case of Leniency application filed by M/s. Siemens (Pakistan) engineering company ltd, Order dated 3rd April 2012, available at

http://www.cc.gov.pk/images/Downloads/Leniency_application_filed_by_ms_siemens_engineering.pdf (last accessed on 11th October, 2013)

¹ Hereinafter referred to as 'CCP'.

² Hereinafter referred to as 'Act'.

³ Hereinafter referred to as 'Applicant'.

Decision of the Commission:

CCP examined the application along with the submitted evidence and required the applicant to furnish some additional information. The applicant fully co-operated and provided the Commission with the requested information. Referring to the definition of International Competition Network, CCP noted that "Leniency" is a generic term to describe a system of partial or total exoneration from the penalties that would otherwise be applicable to a cartel member, which reports its cartel membership to a competition enforcement agency. CCP delved in details of evolution of Leniency measures in jurisdictions like US, Canada and EU.

Section 39 of the Act provides for the grant of immunity or reduction in penalty which is further elaborated in the Leniency Regulations of 2007. As per the law, CCP can grant total immunity if the undertaking is the first to provide evidence and the Commission does not already have sufficient information to establish the alleged violation. Reduction in penalties may be granted up to 100% if undertaking meets the conditions and provides information before/after the issuance of a Show Cause Notice. Interestingly in Pakistan, leniency may even be invoked after a decision has been recorded by the Commission but prior to recourse to the courts.⁴ CCP further held that breach of any commitment or violation of the condition laid down in the law would entitle the Commission to revoke such grant of reduction in penalty.

CCP applauded the application for extending the co-operation and for providing the evidence and granted full leniency. The order noted that cartelization is the biggest challenge for new competition agencies and it is for this reason that grant of leniency will help uncover more cartels. The order also noted that CCP is perhaps so far the only agency out of approximately 110 competition agencies, which envisages an undertaking to invoke leniency provision even after the decision and the findings of the Commission on cartelisation (albeit prior to initiation of proceedings before the court).

Analysis:

This case is the first time that the CCP has received and granted a request for leniency. CCP granted full leniency to the applicant. The order appropriately enumerated the objectives⁵ of leniency as to:

- a. give incentive to a cartel participant to disclose cartel evidence,
- b. encourage a cartel member to confess/admit and implicate his co-conspirators with hard insider evidence about their collusive agreement
- c. break the cartel with the objective to increase the level of compliance with antitrust or competition laws along with creating deterrence and above all,
- d. bring about behavioural change through voluntary compliance and decartelisation.

From the experience of other developed jurisdictions, it is clear that leniency acts as an effective tool to bust cartels. It encourages compliance and works towards building acceptability, recognition and implementation of competition principles. In this case, CCP granted the Applicant 100% reduction in penalty with respect to contravention alleged in the Show Cause Notice in the relevant markets of switchgear and transformer.⁶ Further, it is interesting to see that the applicant applied for immunity after getting a show cause notice of alleged violations and after findings of enquiry committee indicated structured collusive bidding in the relevant market. The grant of full immunity in this case by CCP reinforces the message that the CCP's work is to be taken seriously. This case may further encourage other businesses to come forward with evidence of a cartel.

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⁴ Para 31 of the Order

⁵ Para 82 of the Order

⁶ Para 76 of the Order