

COMPETITION COMMISSION OF PAKISTAN

Islamabad, the 24 April, 2008

NOTIFICATION

S.R.O.401(I)/2008.— In exercise of the powers conferred by section 55 read with sub-section (5) of section 5 of the Competition Ordinance, 2007 (LII of 2007), the Competition Commission of Pakistan, with approval of the Federal Government, hereby makes the following rules, namely:-

The Competition Commission (Extension in Exemption) Rules, 2007

1. Short title, commencement and application.—(1) These rules may be called the Competition Commission (Extension in Exemption) Rules, 2007.

(2) They shall come into force at once.

(3) These rules shall apply to all the undertakings which are party to a prohibited agreement and have been granted an exemption under section 5 of the Ordinance.

2. Definitions. — (1) In these rules, unless there is anything repugnant in the subject or context,—

- (a) “applicant” means a party to a prohibited agreement who have filed an application under sub-section (5) of section 5;
- (b) “concerned undertaking” means the undertaking seeking extension in exemption under these rules;
- (c) “confidential information” means commercial or technical information the disclosure of which would, or might, in the opinion of the Commission, significantly harm the legitimate business interests of the undertaking to which it relates;
- (d) “order” means the order passed under rule 6 for grant of extension in terms of sub-rule (2) of rule 5; and
- (e) “Ordinance” means the Competition Ordinance, 2007 (LII of 2007).

(2) Words and expressions used but not defined herein, shall have the same meanings as are assigned to them in the Ordinance.

3. Who can apply.—(1) An application for extension in the exemption granted with respect to a prohibited agreement under sub-section (5) of section 5 of the Ordinance , shall be made (jointly or otherwise) by the following, namely: —

- (a) where the applicant is an individual, by the individual;
- (b) where the applicant is a company or other body corporate, by a duly authorized officer of that company or body corporate;
- (c) where the applicant is a partnership firm, by a partner of that firm; and
- (d) in any other case, by the concerned undertaking.

(2) If a joint application is made, the application shall be regarded as being made to the Commission by or on behalf of all the applicants. A joint representative shall be, appointed by the joint applicants and authorized to act on behalf of all the joint applicants for the purposes of these rules, unless otherwise directed by the Commission.

4. Form of application.—(1) An application under these rules shall contain the information specified in the Schedule.

(2) The Commission may, by giving notice to the applicant or joint applicants, as the case may be, dispense with the obligation to submit any particular information or document (including any supporting document), if it considers that such information or document is unnecessary for examination of the application.

(3) The Commission may refuse to accept the application submitted to it, if it does not comply with requirements of the Ordinance or these rules.

(4) Every application shall be submitted in three copies, or as otherwise directed by the Commission in certain specific cases.

(5) An application under sub-rule (1) shall be accompanied by such processings fee as may be determined by the Commission from time to time. The fee may be paid in the form of a bank challan or bank draft in favour of the Commission.

5. Consideration of application.—(1) Whenever required to consider an extension in an exemption granted with respect to a prohibited agreement, the Commission shall follow the factors set out in sub-rule (2).

(2) The Commission may, in its discretion, grant extension in the exemption from a prohibited agreement if it can be shown conclusively on the basis of objective facts and analysis of the case to the satisfaction of the Commission that extension is likely to substantially contribute in, —

- (a) improveing production or distribution; or

- (b) promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit:

Provided that the aforesaid benefits can unequivocally shown to outweigh the adverse effects of the absence or lessening of competition.

(3) The applicant shall justify the rationality, necessity or requirement of extension of exemption.

6. Orders of the Commission.—(1) The Commission may. —

- (a) issue an order of extension in terms of sub-rule (2) of the rule 5, and if so deemed necessary or expedient under the circumstances, impose in its discretion, appropriate conditions or obligations subject to which an extension is to have an effect; or
- (b) refuse to grant the extension applied for.

(2) An order may provide. —

- (a) that breach of a condition imposed by the order has the effect of canceling the extension granted;
- (b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, cancel the extension granted; or
- (c) that the Commission may cancel the extension in respect of exemption if it considers that a particular agreement is not the one to which section 9 of the Ordinance or sub-rule (2) of rule 5 applies.

(3) An order may provide the facts and reasons for grant of the extension and the period of extension.

(4) The Commission shall give its decision on an application made under these rules within forty five days of receipt of such application.

7. Appeals.— A person aggrieved by any decision or order of a Member or authorized officer of the Commission in respect of an extension application may prefer an appeal to the Appellate Bench of the Commission in accordance with the Competition Commission (Appeal) Rules, 2008.

(2) The Appellate Bench, while deciding an appeal may also grant the extension requested in the exemption from a prohibited agreement if it can be conclusively demonstrated that a refusal to grant the exemption requested would result in the failure of an undertaking or undertakings and the economic loss arising from the failure or failures far outweigh the benefits of increased competition consequent upon such refusal.

SCHEDULE

[See sub-rule (1) of rule 4]

PART-1

1. Information about the applicant and the other parties to the agreement

- 1.1. Full name, address (registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the applicant and a brief description of the nature of its business. If the applicant is a partnership, sole proprietor or other unincorporated body trading under a business name, give the name and address of the partners or proprietor. Quote any reference which should be used.
- 1.2. Full name, address, telephone and fax numbers and e-mail address (where available) of any representative who has been authorised to act for the applicant, indicating whom they represent and in what capacity (e.g. a solicitor).
- 1.3. Where the declaration to be made in the form set out in Part 2A is signed by a advocate or other representative of the applicant, provides written proof of that representative's authority to act on the applicant's behalf.
- 1.4. If a joint application is being submitted, state the full name of the joint representative, his address (registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available). Where the joint applicants have appointed separate representatives, an explanation must be included as to why a joint representative could not be appointed. The particulars listed in this paragraph must then be furnished for each representative.
- 1.5. 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 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 considers that it is not practicable to notify the other parties of the application, give the reasons why it is not practicable.
- 1.6. Identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this Form, group relationship exists where one undertaking—
 - 1.6.1. owns more than half the capital or business assets of another undertaking;
 - 1.6.2. has the power to exercise more than half the voting rights in another undertaking,

- 1.6.3. has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
- 1.6.4. has the right to manage the affairs of another undertaking.
- 1.7. An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) should be treated for the purpose of this application as being part of the group of each of these undertakings.

2. Purpose of the application

- 2.1 Specify that the application is being made in relation to the extension of an exemption order earlier granted by the Commission.
- 2.2 State the date of expiry of the existing exemption and the reasons why an extension is sought. Also give details of any changes that have occurred in the relevant market and in the agreement itself since the grant of the exemption. Specify how any changes impact on the fulfillment by the agreement of the conditions set out in section 9 of the Ordinance. Also enclose a certified copy of the decision granting the exemption.

3. Details of the agreement or conduct

- 3.1. A brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date and duration).
- 3.2. If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the Applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, applicants are to provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.
- 3.3. Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.
- 3.4. If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.

4. Information on the parties to the agreement or conduct and the groups to which they belong

- 4.1. The turnover in the last business year, of each party to the agreement or conduct which is the subject of the application and the consolidated turnover for the group (within the meaning of 1.6) to which each party belongs. Indicate what proportion of the turnover figures are attributable to the relevant product or geographic market.
- 4.2 Attach the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and the

most recent annual report and accounts for the ultimate parent company of these undertakings.

- 4.2. List the product or service market in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.6) to which they belong are active. Where there are a large number of products and services, please pay particular attention to any markets in which the combined undertakings have significant markets shares, or the largest proportions of the turnover.

5. Other information

- 5.1. Any other information which the applicant considers helpful. In particular, if you believe that the impugned agreement:

- (a) does not have an appreciable adverse effect on competition in Pakistan please state your reasons and provide evidence. Note, however, that certain agreements, such as those relating to price-fixing, will be very nearly always regarded as having an appreciable adverse effect;
- (b) has net economic benefits that would not be achieved except for the agreement. In determining whether net economic benefits exist, the Commission will consider whether the agreement contributes to improving production or distribution or promoting technical or economic progress in a way which does not impose restrictions which are not indispensable to the attainment of those objectives and which would not afford the possibility of eliminating competition substantially. Applicants should provide studies or documents which demonstrate the feasibility of operation of the agreement and the benefits likely to result from continued operation of the agreement and the adverse effects arising from its non-operation.

- 5.2. Attach evidence of the payment of fees.

6. Supporting documents

Ensure that the applicant has attached the following documents (where relevant) to the application:

- 6.1. if 1.3 of this Form applies, written proof of the representative's authority to act on the applicant's behalf;
- 6.2 a copy of the decision granting the exemption;
- 6.3. if 3.2 of this Form applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application;
- 6.4.the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and the most recent annual report and accounts for the ultimate parent company of these undertakings (see 4.1 of this Form); and
- 6.5. any feasibility studies, documents or other evidence as per para 5.1 of this Form.

PART-2

Under clauses (c) and (d) of sub-section (1) of section 38 of the Ordinance, it is an offence, punishable with fine to provide information which is false if the undertaking or person providing it knows that it is false. If the undertaking or person is a body corporate, its officers may be guilty of an offence punishable under section 38 of the Ordinance.

DECLARATION

The undersigned declare and confirm that all information given in the Form and all pages annexed hereto are correct to the best of his knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts and the undersigned is fully aware of the consequences as stipulated in Para 1 of Part-2.

Signature

Name (in block capitals):

Designation:

Date:

No. 10(1)SY/CCP/RULES-EXEMPTION/07

(Mohammed Hayat Jasra)
Secretary

