

GOVERNMENT OF PAKISTAN
(REVENUE DIVISION)
FEDERAL BOARD OF REVENUE

C. No.1(7)L&P/2008(Pt)

Islamabad, the 8th November, 2012.

To: ✓ Mr. Saad Rashid,
Executive Director,
Transparency International-Pakistan,
Karachi.

SUBJECT: COMPLAINT AGAINST SRO 413(I)/2012-TRACKING AND MONITORING OF CARGO RULES FAVOURING SINGLE COMPANY FOR CREATING MONOPOLY AND CREATING EXCLUSIVE RIGHTS FOR BUSINESS OF RS.800 M/ANNUM

I am directed to refer to Transparency International- Pakistan, Karachi's letter dated 18.08.2012 on the above cited subject enclosing therewith a complaint from an organization named as "Pakistan Custom Bonded Carriers Association", followed by reminder dated 03.10.2012 and to say that input/comments of the Federal Board of Revenue were not sought/obtained before forwarding the above complaint alongwith recommendations to FBR and different offices for taking action. This has led to circulation of certain inaccuracies based on misconceptions.

2. At the outset, it may please be noted that the Customs licensed bonded carriers are already required to permanently install/fix tracking device on the vehicles / trailers employed by them from a tracking company of repute / duly approved by the FBR, under the rules which license such carriers, for transportation of bonded (on which duty and taxes are not collected at the port of entry) cargo.

3. In view of the above requirement, and in order to prevent misuse of the transit and trans-shipment facility by unscrupulous elements, FBR started the development of a comprehensive system of *en route* tracking and monitoring of bonded cargo through a specially constituted committee of Customs officers. The Terms of Reference (TOR) and pre-qualification criteria were accordingly developed by the said committee in December 2010. The "Safe Transportation Environment Project" was thus conceived for monitoring and tracking, on real time basis, of all types of bonded cargo by using GSM/GPRS/Satellite communications or any modern technology, in stages. The said project, with an initial duration of five years (extendable), required investment to be undertaken by the service provider(s), cost to be borne by the licensed bonded carriers/ transport operators and owners/importers of the cargo, with no involvement of public funds. It is worth mentioning that before finalization of the above documents, input on these documents was also obtained from major users/ service providers of tracking.

4. Despite non-involvement of any government money, the procedure of public procurement was followed (which otherwise was legally not required) for selection of suitable firm(s) for the said project, with the intent to give a fair and transparent deal

to the clients of FBR i.e. carriers/ transporters, importers etc. The project was thus advertised in national newspapers, short-listing of interested firms was carried out, RFP for this unique project was developed, a pre-proposal conference was held in FBR, and technical evaluation of the firms was done by the technical committee of FBR. The above process resulted in technical qualification of five tracking companies.

5. As regards the opinion of the financial committee of FBR to cancel the financial proposals of technically qualified firms and ask for fresh proposals from them, after making changes in RFP and holding another pre-proposal conference, the same was examined in FBR. In the report of the said financial Committee dated 05.10.2011, certain factual inaccuracies were observed. The RFP clearly mentioned that the financial proposals shall be based on a lump-sum contract and the service provider/ consultant was to provide a lump-sum cost of investment for the project (with a duration of five years). In addition to submission of total cost of the project by these firms, some of the firms did provide information regarding fee / service charges to be recovered from the transporters/owners in their financial proposals. In light of the above, the proposed action of the financial committee was not approved, especially when the technically qualified firms had already disclosed their costs/ prices for this project. Details of fee and charges to be recovered from the transporters/carriers/owners of cargo in light of the given total cost of the project were, however, obtained from all the technically qualified firms.

6. In view of the recommendations of the technical and financial committees of FBR, it was decided to adopt licensing regime for this project under a well defined criteria and procedure notified under the relevant provisions of the Customs Act, 1969, instead of a binding contract. M/s TPL Trakker Limited, having the highest technical score and lowest total cost for the opted technology, was approved for grant of license (**instead of awarding of a binding contract**). Thereafter, the Tracking and Monitoring of Cargo Rules 2012 were notified by FBR vide SRO No. 413(I)/2012 dated 25.04.2012, which are applicable on specified transit and trans-shipment cargo. M/s TPL Trakker Limited have been granted a non-exclusive license for a period of three years, extendable for another two years, subject to satisfactory performance. This license can be suspended and terminated anytime in case of failure to comply with the provisions of the said rules.

7. Pilot of the project has been run in Karachi during the first week of September, 2012 and its results are being evaluated at the level of the Project Director in consultation with the relevant stakeholders. Besides, all aspects of the said project are being reviewed in FBR in light of feedback received and concerns reported by different quarters. This includes the aspect of licensing of other technically qualified firms with valid PTA license, under the aforesaid rules. Besides, new applications for licensing, as and when received, will be processed under the aforesaid rules.

8. In order to give effect to the licensing regime for tracking under the subject project, FBR has notified Tracking and Monitoring of Cargo Rules, 2012 vide S.R.O. 413(I)/2012 dated 25.04.2012. The above rules have been issued under the provisions of section 219 of the Customs Act, 1969 to regulate the afore-said activity of real time tracking of bonded cargo *en route* in a predictable, elaborate and transparent manner. The criteria for grant of license under the said rules is similar to the one advertised in February 2011, which led to the participation of nineteen firms

in the process and technical qualification of five firms later on. These criteria can, therefore, not be termed as company specific, exclusive and meant to favour a single company. Moreover, these rules are not monopolistic or anti-competition as the same do not restrict licensing to a tracking single firm/company. The said rules have not introduced anything wholly new in this regard, but have only consolidated and streamlined the procedure for tracking of these types of cargo. These rules are also not violative of public procurement rules (not applicable in this matter, as no public procurement is involved) and the Competition Act, 2010. The matter of vires of the above rules is, however, pending before the Honorable Sindh High Court in Constitution Petitions.

9. The Tax Reform Coordination Group (TRCG) has been constituted by the Federal Government for reforms in the tax administration and policy. It is not the governing body of FBR, as the Federal board of Revenue functions in accordance with its relevant laws and the Rules of Business of the Federal Government. The said group comprises of different members, who are not nominated by/ at the level of FBR. Mr. Ali Jameel of M/s TPL Trakker is a member of one of the sub-groups under TRCG, which is not concerned with the subject activity. Moreover, the events narrated in the above mentioned letter of the Transparency International had no bearing on the selection process, which, as mentioned above, was carried out in an organized and transparent manner independent of those events.

10. As regards the remaining recommendations of TIP, the following is the initial response of the FBR:-

- (i) As mentioned in the beginning, the rules requiring licensing of carriers / transport operators for transportation of bonded cargo already stipulate installation of fixed tracking devices on their vehicle/trucks. This requirement under the subject project is thus an important condition to ensure en-route integrity of the bonded cargo; and
- (ii) TIP's recommendations regarding alteration in the eligibility criteria will generally lower the bar of qualification to become a licensee under these rules. Recommendations to this extent, besides not being objective, do not appear to be suitable for such a project, where en-route integrity of cargo is to be ensured through use of real time technology on a large scale.

11. Since the above project is of immense importance to streamline movement of transit and trans-shipment cargo within the country and to prevent the abuses and misuses of facilities under these schemes, different groups with vested interests and having undue economic and financial considerations might want to avoid such monitoring and effective control measures on different pretexts.

12. The Transparency International Pakistan may, however, feel assured that FBR shall take every step to maintain transparency in the said activity, and to address the just grievances of the stakeholders.

The: As above.

(Muhammad Irfan Wahid)
Secretary (L&P)