

QUICK FIX: NO TIME TO ORIENTATE

The Sunday Leader last week commenced investigative reporting on one of the major privatisations carried out by PERC, i.e. the privatisation of Orient Lanka Ltd. - the government owned duty free shops at the Bandaranaike International Airport, selling exclusively, liquor, tobacco, perfumes, cosmetics and confectionery.

PERC had advertised on June 30, 1995, requesting interested parties to register their expressions of interest for the privatisation of Orient Lanka Ltd. specifically for the acquisition of 60% shareholding of Orient Lanka Ltd. According to PERC's advertisement, to qualify for pre-qualification, such parties had to be duty free operators with international experience.

ORIENT LANKA LTD
OFFER FOR SALE OF 60% HOLDING
OF SHARES OF
ORIENT LANKA LIMITED

Since the proposals received from the pre-qualified bidders failed to reach the reserve price set by the Government for the divestiture of Orient Lanka Ltd., the Public Enterprise Reform Commission has announced the decision to receive fresh bids for the divestiture of 60% holding of shares of Orient Lanka Ltd.

Previously pre-qualified bidders or such other parties, who may be in a position to demonstrate their capabilities to develop the business in line with the expectations of the government, are invited to submit offers. Bids will have to conform to the revised stipulated minimum reserve price of Rs. 1,000 million for disposal of 60% of the issued share capital. The bids should be submitted before 10.00 A.M on Wednesday, 15 November 1995 to:

R.N. Asirwatham, Chairman
Public Enterprise Reform Commission
Bank of Ceylon Head Office Building, 30 Floor
No. 4 Bank of Ceylon Mawatha,
Colombo 1

Parties interested in obtaining a profile of Orient Lanka Ltd., and other financial details should contact the Public Enterprise Reform Commission, at the address and telephone numbers given below.

PERC

WATCHFUL IN THE PUBLIC INTEREST
PUBLIC ENTERPRISE REFORM COMMISSION,
Bank of Ceylon - 30th Floor,
No. 4, Bank of Ceylon Mawatha, Colombo 1, Sri Lanka.
Telephone: 94-1-338756/8. Fax: 94-1-326116

Offer of 60% Shareholding

Previously in April 1995, the Weitnauer Group of Companies, Switzerland one of the leading duty free operators in the world, acting together with their local representatives, Victory Silk Store (Duty Free Shop) Ltd., had submitted a proposal, through the Ministry of Finance to PERC, offering to take on a franchise concession, for a period of 10-years, the duty free shops of Orient Lanka Ltd., at the Bandaranaike International Airport. In their proposal, pointing out that gross profits on such duty free sales throughout the world was around 50% of sales value, they offered to pay 25% of the sales value annually, as concession fees, to the government, in addition to meeting the costs of operations of Orient Lanka Ltd. With Weitnauer's wide international experience, as the 3rd largest duty free operator in the world, such gross profits reckoned in such duty trade could not have been in question.

WEITNAUER'S FRANCHISE PROPOSAL FOR ORIENT LANKA

In fact in their proposal, they had pointed out, what the earnings of the government would have been from the Duty Free Shops of Orient Lanka Ltd. at the Bandaranaike International Airport for the previous 6 years, i.e. 1989 to 1994, had there been such 25% concession fee arrangement to the government, during such past period, as has been proposed by them now -

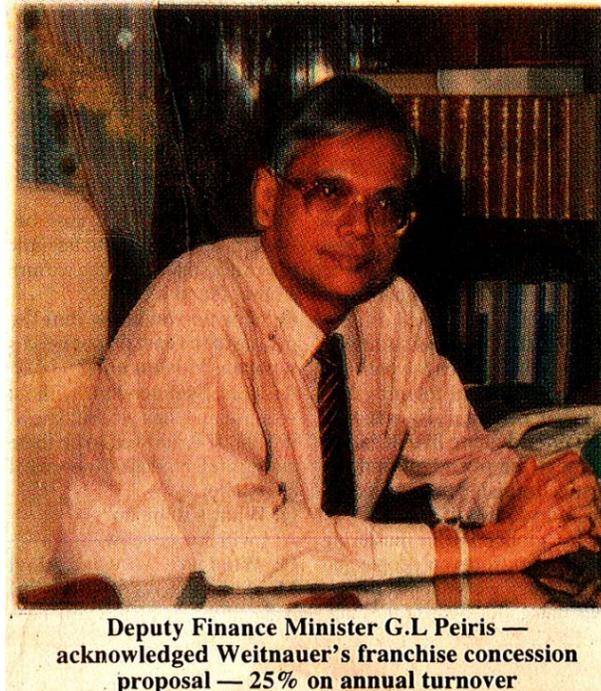
	<u>Turnover</u>	<u>Concession</u>
	<u>Rs.Mn.</u>	<u>Fees to Govt.</u>
	<u>Rs.Mn.</u>	<u>Rs.Mn.</u>
1989	174.8	43.4
1990	187.8	43.7
1991	234.9	47.0
1992	354.9	58.6
1993	545.5	136.4
1994	788.5	197.2

In such proposal they specifically stated - *"We are prepared to take these shops on concession for a period of 10-years on a payment of 25% of sales being concession fees. We give below our projection of sales and 25% as concession fees being revenue to the government for the next 10 years."* - The projections of turnover and concession fees payable to the government, during such proposed 10-year franchise concession period, were set out in their proposal as follows, further stating that such projections were very conservative and that the actuals could be much higher in view of the increasing traffic through the Bandaranaike International Airport

	<u>Turnover</u>	<u>Concession</u>
	<u>Rs.Mn.</u>	<u>Fees to Govt.</u>
	<u>Rs.Mn.</u>	<u>Rs.Mn.</u>
1995	1000	250
1996	1100	275
1997	1210	302
1998	1331	332
1999	1464	366
2000	1610	402
2001	1771	442
2002	1948	487
2003	2143	535
2004	2358	590

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Such proposal and offer to take on a 10-year franchise concession, the duty free shops of Orient Lanka Ltd., at the Bandaranaike International Airport, paying the government annually a concession fee of 25% of the turnover, in addition to meeting the costs of operations of Orient Lanka Ltd., was supported in writing by the Weitnauer Group of Companies, Switzerland by their letter dated April 4, 1995, signed by two of their Vice Presidents, themselves. In response to such proposal, then Chairman, PERC, R.N. Asirwatham, by his letter dated May 18, 1995 stated, that PERC was conducting studies on Orient Lanka Ltd. and was exploring possible options and stated further, that such concessions will be arranged only at a much later date, and that such concessions were likely to be tendered.



The above proposal addressed to the then Secretary, Ministry of Finance and member of PERC, A.S. Jayawardane, had also been forwarded to the Deputy Minister of Finance, G.L. Peiris, on whose direction, his Co-ordinating Secretary, Palitha Perera had replied by his letter dated April 10, 1995 stating - "I have been directed by the Hon. Deputy Minister to inform you that your letter has been referred to the Secretary, Ministry of Finance for necessary action, please."

PERC ADVERTISES ORIENT LANKA FOR OUTRIGHT SALE

It is in the very background of this given scenario, that PERC shortly thereafter on June 30, 1995, advertised in the press inviting international duty free operators, who were interested, to express their interests for pre-qualification for the privatisation of Orient Lanka Ltd., specifically for the acquisition of 60% shareholding of Orient Lanka Ltd. Such expression of interests had to be submitted to PERC not later than August 11, 1995. Consequently, PERC shortlisted and pre-qualified 10 parties. Among the 10 parties pre-qualified was the Weitnauer Group of Companies, Switzerland.

Weitnauer had tendered their application for pre-qualification to PERC on August 7, 1995, in response to PERC's advertisement on June 30, 1995. Thereafter on August 21, 1995, PERC wrote to Weitnauer informing them that they had been pre-qualified among the 10 shortlisted parties and that before September 11, 1995 all relevant documents would be sent to them. PERC followed up on August 29, 1995 with a letter forwarding the general conditions and guidelines for bidding for the sale of 60% shareholding of Orient Lanka Ltd. The bids together with a 10% bid bond and other relevant documents were to reach the then Chairman PERC, R.N. Asirwatham, himself, before 2.00 p.m. on October 11, 1995.

CONFLICT OF INTERESTS & HOLDING OF PUBLIC OFFICE

It was disclosed that, previous to such pre-qualification advertisement by PERC, Victory Silk Store (Duty Free Shop) Ltd. acting together with the Weitnauer Group of Companies had in April 1995, submitted to PERC through the Ministry of Finance, their proposal to take on a 10-year franchise concession, the duty free shops of Orient Lanka Ltd. at the Bandaranaike International Airport.

However, after the advertisement for pre-qualification, another local company, Shaw Wallace & Hedges Ltd. had entered into negotiations with the Weitnauer Group of Companies, to collaborate with them in their offer for the privatisation of Orient Lanka Ltd. In the application for pre-qualification titled "Statement of Qualification for Orient Lanka Ltd." submitted to PERC by the Weitnauer Group of Companies dated August 4, 1995, Weitnauer stated - "Already at this point we would like to inform you that we are negotiating with Shaw Wallace & Hedges Ltd., Colombo about a joint-venture for the acquisition of Orient Lanka Ltd." Such Statement of Qualification, inter-alia, further stated - "Shaw Wallace & Hedges Ltd. is a 51% subsidiary of Shaw Wallace & Hedges Ltd., India, which in turn is a part of the Jumbo Group headquartered in Dubai".

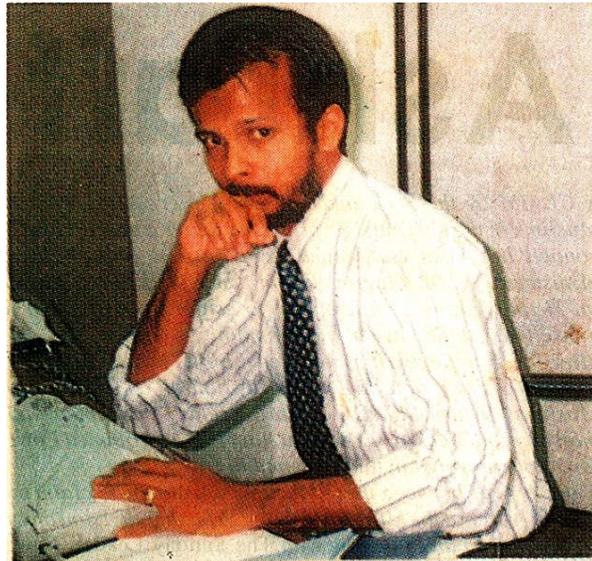
The joint-venture collaboration between the Weitnauer Group of Companies and Shaw Wallace & Hedges Ltd. was to take the form of a new company incorporated as Weitnauer Lanka (Pvt) Ltd. with BOI approval. The draft Memorandum of Articles of Association for this new company, Weitnauer Lanka (Pvt) Ltd. had been prepared and submitted by the law firm, Julius & Creasy, Attorneys-at-Law, who have figured in relation to some of the privatisation transactions undertaken by PERC.

After such pre-qualification application had been made, KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants had carried out "*a due diligence investigation*" on Orient Lanka Ltd., to facilitate the formulation of the proposal of bid by Weitnauer Group of Companies, in collaboration with Shaw Wallace & Hedges Ltd., for the acquisition of 60% shareholding of Orient Lanka Ltd. The "due diligence investigation report" on Orient Lanka Ltd., prepared by KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants gave the table of contents as follows:- 1. Risk Management; 2. Selling Arrangements; 3. Buying Arrangements; 4. Human Resource Management; 5. Fixed Assets; 6. Stocks; 7. Long Term Liabilities; 8. Valuation Report. The following share valuations in respect of the 3 million shares of the Orient Lanka Ltd. had also been given in such "*due diligence investigation report*"- Net Asset Basis Rs. 82/- per share, Yield Basis Rs. 270/- per share and P/E Ratio Basis 495/- per share.

In such given scenario, serious questions of conflict of interests and on the conduct of public officers arise. Then Chairman, PERC, R.N. Asirwatham was no doubt by virtue of such public office, a public officer then. R.N. Asirwatham was/is also the second most Senior Partner of KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants, which is a partnership and not a company with a separate corporate entity. In such circumstances, how could the partnership, KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants, of which R.N. Asirwatham, himself, was/is a Senior Partner, have contractual service agreements for fees, with parties before PERC and dealing with PERC, whose Chairman also was R.N. Asirwatham, himself, moreso particularly in relation to matters of such parties pertaining to their such dealings with PERC, itself? Would any other public officer be permitted to indulge in such practice, even under circumstances, where his wife was the partner and not even himself?

Subsequently however, the contemplated joint-venture between Weitnauer Group of Companies and Shaw Wallace & Hedges Ltd. had not materialised.

SUDDEN INTRODUCTION OF NEW CONDITION



**Former Director General SEC, member PERC,
Arittha Wikramanayake — why were the Orient Lanka
shares not sold on the CSE?**

In the meantime, whilst the final offers for the privatisation of Orient Lanka Ltd. was to be made to PERC by 2.00 p.m. on October 11, 1995, PERC had called a meeting of the 10 short listed pre-qualified parties to be had on September 25, 1995, which was just two weeks prior to the final offer closing date of October 11, 1995. At such meeting of the pre-qualified parties, without any previous notification, PERC suddenly had introduced a new condition, which was, that parties making the final offers were additionally required to give a further undertaking that they would purchase a further 30% of the shareholdings of Orient Lanka Ltd., in addition to the 60% shareholding, within a period of two years, if the public issue of such 30% shareholdings would not be successfully subscribed; such undertaking to purchase the additional 30% shareholdings referred to as the "put option" was to be at a price 10% p.a. more than the price offered for the 60% shareholding.

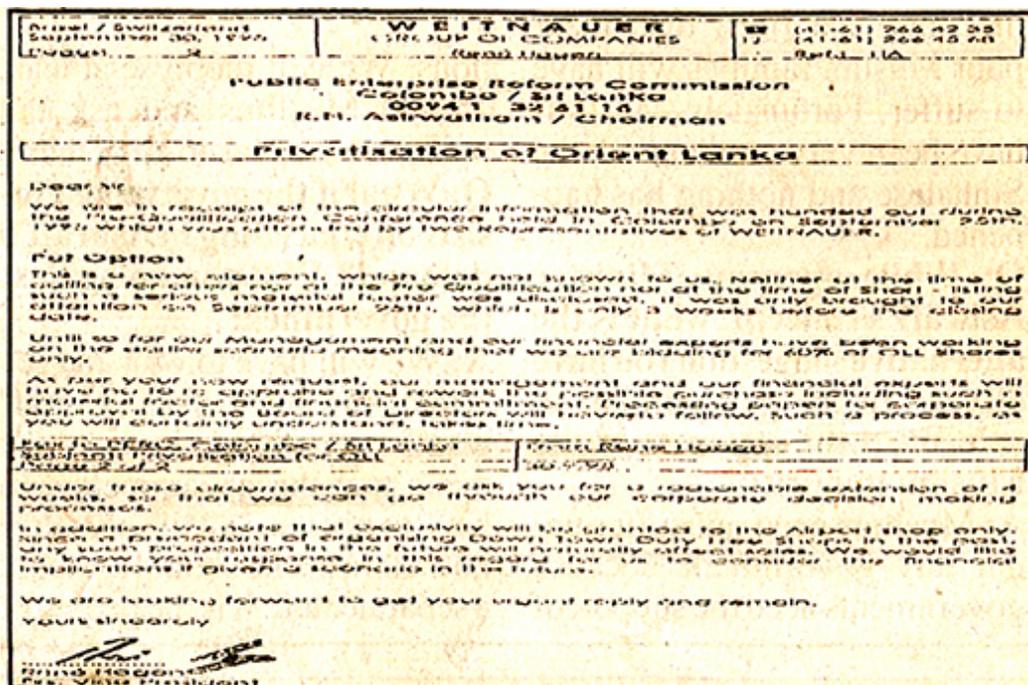
Weitnauer Group of Companies being a well established group of companies, with established corporate systems and procedures required more time, in view of such material condition suddenly introduced by PERC on September 25, 1995, just two weeks prior to the final date for offer of October 11, 1995, since such two week period had been inadequate for them to go through their inhouse corporate approval processes, including board approval.

At the meeting held on September 25, 1995, PERC circulated a three page letter under the signature of Chairman PERC, R.N. Asirwatham, dated September 25, 1995, under the subject "For circulation to Pre-Qualified Bidders for the disposal of 60% holding of Shares of Orient Lanka Ltd.", setting out various informations and conditions for the making of offers on October 11, 1995. The lease agreement with the Airport & Aviation Services Sri Lanka Ltd. was stipulated to be for a period of 10-years effective from October 1, 1995, with a floor rental of Rs. 500/- per sq.ft. per month for arrival shops and a floor rental of Rs. 350/- per sq.ft. per month for departure shops and in addition, a fee of 3% of monthly turnover, subject to a minimum guaranteed payment of Rs. 1.75 million per month.

The PERC letter further stated:- "The proceedings of the bid enhancement conference which will continue up to 12 noon and will be held in public view and be recorded for future TV broadcast and will be chaired by R.N. Asirwatham, Chairman, Public Enterprises Reform Commission, whose decision on any matter arising will be final and conclusive and not subject to any appeal." - Not even an appeal to the Cabinet of Ministers was permissible!!

WEITNAUER REQUESTS EXTENSION

In such circumstances Weitnauer by their letter dated September 30, 1995 requested PERC to extend the October 11, 1995 deadline by a reasonable period of four weeks, giving them time to go through their inhouse decision making processes. Weitnauer's letter to PERC dated September 30, 1995 stated as follows:-



Hagen's letter to Asirwatham

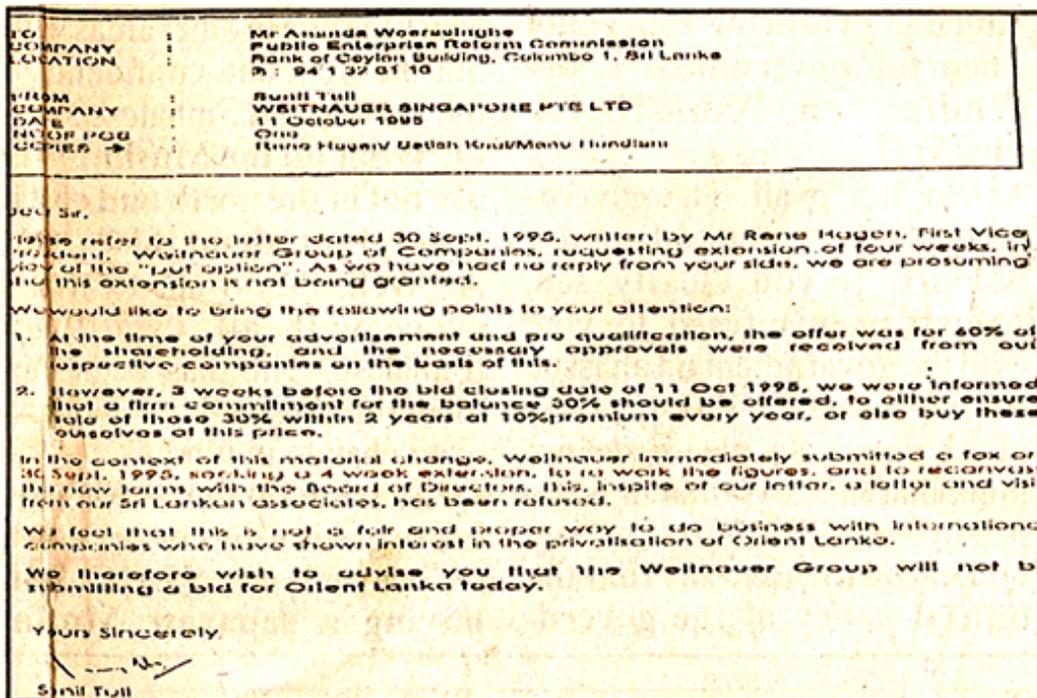
"We are in receipt of the circular information that was handed out during the Pre-Qualification Conference held in Colombo on September 25th 1995, which was attended by two Representatives of WEITNAUER.

Put Option - This is a new element, which was not known to us. Neither at the time of calling for offers nor at the Pre-Qualification nor at the time of short-listing, such a serious material factor was disclosed. It was only brought to our attention on September 25th, which is only 2 weeks before the closing date. Until so far our Management and our financial experts have been working on the earlier scenario meaning that we are bidding for 60% of OLL [Orient Lanka Ltd.] shares only. As per your new request, our management and our financial experts will have to re-appraise and rework the possible purchase including such a material factor and financial commitment. Processing papers for corporate approval by the Board of Directors will have to follow. Such a process, as you will certainly understand, takes time. Under these circumstances, we ask you for a reasonable extension of 4 weeks, so that we can go through our corporate decision making processes.

In addition, we note that exclusivity will be granted to the airport shops only. Since a precedent of organising Down Town Duty Free Shops in the past, any such proposition in the future will naturally affect sales. We would like to know your response in this regard for us to consider the financial implications, if given a scenario in the future. We are looking forward to get your urgent reply and remain."

EXTENSION DENIED- WEITNAUER MAKES NO BID

Notwithstanding such reasonable request made by Weitnauer, PERC did not grant such 4 week extension nor respond to such letter, but went ahead to accept final offers on October 11, 1995. Under such circumstances, Weitnauer could not make an offer, but tendered their letter of protest dated October 11, 1995, stating, inter-alia, that this was not a fair and proper way to do business with international companies. Weitnauer's letter to Ananda Weerasinghe, then Director General, PERC, dated October 11, 1995, stated -



Weitnauer's letter to PERC

"Please refer to the letter dated 30 Sept. 1995, written by Mr. Rene Hagen, First Vice President, Weitnauer Group of Companies, requesting extension of four weeks, in view of the "put option". As we have had no reply from your side, we are presuming that this extension is not being granted.

We would like to bring the following points to your attention:- 1. At the time of your advertisement and pre qualification, the offer was for 60% of the shareholding, and the necessary approvals were received from our respective companies on the basis of this. 2. However, 2 weeks before the bid closing date of 11 Oct 1995, we were informed that a firm commitment for the balance 30% should be offered, to either ensure sale of these 30% within 2 years at 10% premium every year, or else buy these ourselves at this price.

In the context of this material change, Weitnauer immediately submitted a fax on 30 Sept. 1995, seeking a 4 week extension, to re-work the figures, and to recanvass the new terms with the Board of Directors. This, inspite of our letter, a letter and visit from our Sri Lankan associates, has been refused. We feel that this is not a fair and proper way to do business with international companies, who have shown interest in the privatisation of Orient Lanka. We therefore wish to advise you that the Weitnauer Group will not be submitting a bid for Orient Lanka today."

ORIENT LANKA BID — A FAILURE

At the closing of bids, that PERC went ahead with on October 11, 1995, rejecting such reasonable request for a 4 week extension, only four parties submitted bids. They were - AerRianta International, Bahrain - Dubai Duty Free, UAE, - Gebr Heinemann, Germany - Lion City Holdings, Singapore. Consequently, PERC conducted "a bid enhancement meeting" chaired by Chairman, PERC, R. N. Asirwatham on October 18, 1995. The participating bidders had been informed that PERC had fixed a reserve price of Rs. 1200 million for the 60% shareholding of Orient Lanka Ltd. Such "bid enhancement meeting" was a total failure and no successful bid was made for the acquisition of 60% shareholding of Orient Lanka Ltd. and accordingly, no award was made.

A serious question arises as to why, PERC abandoned another precedent that had been set from the time of the former government, where the sale of controlling shareholdings in profitable state owned companies had been put up for open competitive bidding on the trading floor of the Colombo Stock Exchange, for which there is proper established system and procedure. Ought not such 60% shareholding of Orient Lanka Ltd. therefore, have been sold on the basis of open competitive bidding, with a stipulated minimum reserve price, on the trading floor of the Colombo Stock Exchange in conformity with such established system and procedure? Why was it not done abandoning such established precedent? Who takes responsibility?

Subsequently, very shortly thereafter, PERC re-advertised in the press on Saturday, November 11, 1995 calling for fresh offers for the sale of 60% shareholdings of Orient Lanka Ltd. The advertisement stated that such offers were being solicited, since the proposals received from pre-qualified bidders failed to reach the reserve price set by the government for the divestiture of Orient Lanka Ltd. The fresh offers were required to conform to the revised stipulated minimum reserve price of Rs. 1000 million for the disposal of 60% shareholdings of Orient Lanka Ltd.

ORIENT LANKA RE-ADVERTISED WITH 2-DAY DEADLINE !

Such fresh offers were not only solicited from previously pre-qualified bidders, but also from such other new parties, who were in a position to demonstrate their capability, *to develop the business in line with the expectations of the government*. However, the most shockingly surprising and intriguing stipulation in such advertisement, that was published in the press on Saturday November 11, 1995 was that bids were required to be submitted to the then Chairman, PERC, R.N. Asirwatham, before 10.00 a.m. on Wednesday, November 15, 1995, thereby absurdly giving only *two working days time* i.e. Monday 13th and Tuesday 14th November 1995 for submission of any bids.

The advertisement specifically invited fresh bids not only from the pre-qualified parties, but also from any other party and therefore such ridiculous 2 day deadline was highly questionable ? How could a new party, that too an international party, ever have responded with such a 2-day deadline and on such a transaction ? If PERC was genuinely serious in attracting a new party, ought not adequate time have been given with due publicity ? Such highly questionable lightning deadline, hastily given, no doubt gives rise to speculation in the minds of right thinking people and puts into jeopardy all enunciations of policies on free and fair competition, transparency and accountability.

- Published in The Sunday Leader on 31.8.1997 by Nihal Sri Ameresekere under the pseudonym 'Bismark'