

THE BRITO DEADLINE ON THE OLL DEAL

The Sunday Leader last week disclosed, that after the meaningless and fruitless discussions on Wednesday, January 17 1996, for which the Weitnauer Group of Companies, Switzerland, had been specifically got down by PERC, and after which discussions, Weitnauer representatives had disappointedly left Sri Lanka immediately, and that thereafter, on Thursday, January 18, 1996, J.M.S. Brito, Consultant, Ministry of Finance, had telephoned Weitnauer's local representative, requesting Weitnauer to confirm in writing by 4.30 P.M. on the very next day i.e. Friday January, 19, 1996, that Weitnauer were agreeable to purchasing 60% shareholding of Orient Lanka Ltd. for Rs. 1000 million. Even if Weitnauer had promptly given such confirmation, yet could not another party have had the opportunity of proffering an incrementally higher offer to conclude such deal ?

In response to such request made by J.M.S. Brito, the local representative of Weitnauer on the very next day i.e. on January 19, 1996 had intimated to J.M.S. Brito, that Weitnauer required a short period of time to respond to PERC, vis-a-vis his communication on the acquisition of 60 % shareholding of Orient Lanka Ltd., for Rs. 1,000 million. J.M.S. Brito, however, had replied to Weitnauer's local representative, that the 24-hour deadline firmly stood and that Weitnauer's confirmation, if at all, to purchase 60 % of the shareholding of Orient Lanka Ltd., had to be received by 4.30 P.M. that very day i.e. Friday, January 19, 1996.

At that very same time, whilst such written confirmation was being solicited from Weitnauer, PERC was also having discussions and negotiations with Alpha Airports Group PLC, U.K. on that very day, Friday, January 19, 1996. Regardless, PERC made award to Alpha Airports Group PLC, U.K. for the minimum reserve price of Rs. 1000 million and PERC promptly announced to the media on Monday, January 22, 1996, of such award of 60% shareholding of Orient Lanka Ltd. to Alpha Airports Group PLC. The question arises as to whether, a Cabinet Meeting had been held, between Friday, January 19, 1996 and Monday, January 22, 1996, to have received approval for such award to Alpha Airports Group PLC UK, for Chairman PERC, R.N. Asirwatham to have made such public pronouncement of such a government commitment?

PERC CHAIRMAN'S EXPLANATION TO WEITNAUER

Unaware of such conclusion of the deal, Weitnauer, Singapore, in following up on their local representatives discussion on Friday, January 19, 1996, faxed a letter on Monday, January 22, 1996 to then Chairman, PERC R.N. Asirwatham, stating that the subject matter needed discussion with the corporate management in Switzerland and that Weitnauer would respond to PERC very shortly on the matter of PERC's request to confirm the purchase of 60% shareholding of Orient Lanka Ltd. at Rs. 1000 million. However, in response thereto, Chairman PERC, R.N. Asirwatham, submitted to Weitnauer a letter dated February 14, 1996. The letter signed by R.N. Asirwatham bears the reference below his signature JMRB/AW/ap. Had the letter apparently been prepared by J.M.S. Brito, for the signature of Chairman, PERC, R.N. Asirwatham ? PERC's letter stated -

"We refer to your letter dated Monday 22 January 1996, but sent to us by fax only on Thursday 25th January 1996. We set out below the sequence of events, so that the decision taken by the Commission is clearly understood.

On 26th October 1995, the Commission issued a Press Release (which was also faxed to the Weitnauer Group of Companies with a copy to Shaw Wallace) stating that as a result of the Bids failing to reach the reserve price at the Bid Enhancement Conference on 18 October 1995, the Commission will receive up to 15 November 1995 bids for the divestiture of 60% holding of shares in Orient Lanka Ltd., which will conform to the revised stipulated minimum price of Rs. 1000 million.

You sent us your proposal dated 14.11.1995 which mainly outlined proposals for a management contract. However, your last paragraph on page 2 stated "alteratively should the Government of Sri Lanka so require for us to negotiate to purchase 60% of the shreholdings of Orient Lanka Ltd. with a further underwriting in respect of the balance 30%. We would be most agreeable to discuss this further". Hence, as a result of this, you were requested to meet the Commission team on Wednesday 17 January 1996.

At this meeting you were clearly and very specifically asked whether you were prepared to make a specific bid for at least the minimum stipulated price of Rs. 1000 million for 60% shares, (or in fact any increased bid over the original Rs. 738 million bid the Commission had received in October 1995). Your Company stated that they were not in a position to make any bid but had come only to negotiate on a possible management contract. At this stage I stated that in the event of not obtaining the minimum stipulated price from the other bidder called for negotiations, the Commission might consider the possibility of a Management Contract, but then it would have to be advertised and an equal opportunity to bid be given to all pre-qualified bidders.

After the meeting on 17.1.96, the Commission decided on the morning of 18.1.96 to give you one last opportunity to make a bid for the 60% holding with a deadline no later than 4.30 p.m. Friday 19 January 1996. We received a phone call from your Colombo representative around 4.45 p.m. on 19.1.96, stating you were still not in a position to make a specific bid. We note we have had no further response since your letter to us on 22 January 1996. However, as you might know, we received an offer, which met our criteria including the acceptance of the put option, and has now been accepted. We thank you for the interest expressed by you."

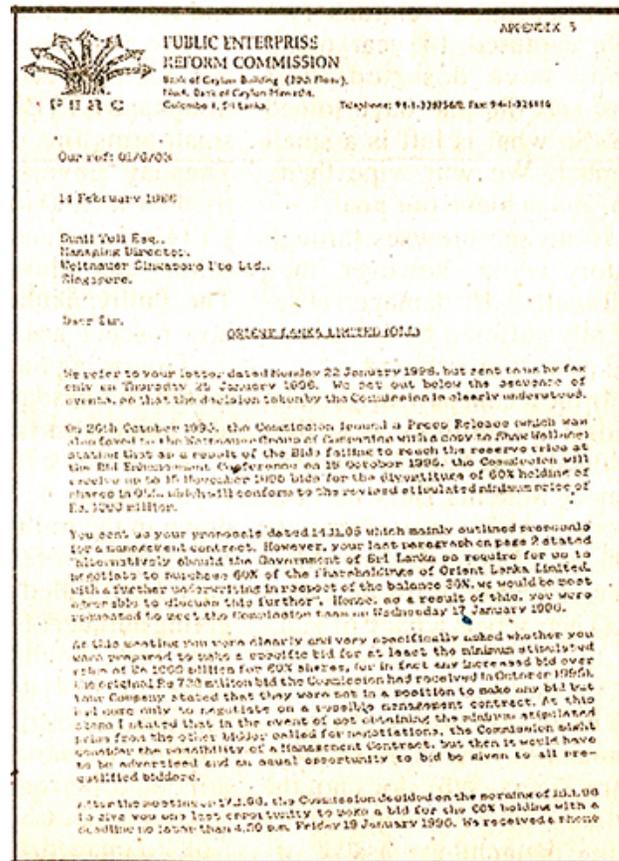
QUESTIONABLE ISSUES?

However, PERC's official letter sent to Weitnauer on December 4, 1995 by the then Director General, PERC, Ananda Weerasinghe, calling Weitnauer for discussions was to meet the 'Government appointed Evaluation Committee' and for such 'Government appointed Evaluation Committee' to seek further details of Weitnauer's proposal of November 14/15, 1995. Nevertheless, then Chairman, PERC, R.N. Asirwatham, has subsequently referred to it as - *"You were requested to meet the Commission team on, Wednesday 17th January, 1996"*. The 'Government appointed Evaluation Committee' became a 'Commission team', which according to Weitnauer had turned out to be a one man team, J.M.S. Brito, who alone apparently had essentially conducted such discussions!

The then Chairman, PERC, R.N. Asirwatham, has further stated in his letter of February 14, 1996 to Weitnauer that, *"We note we have had no further response since your letter to us on 22 January 1996"*. What further response could the then Chairman PERC, R.N. Asirwatham ever have expected from such a well established internationally reputed Swiss company, such as Weitnauer, when the then Chairman, PERC, R.N. Asirwatham had, himself, announced to the media on January 22, 1996, that the 60 % shareholdig of Orient Lanka Ltd. had already been awarded to Alpha Airports Group PLC, UK? How could it ever have been expected of Weitnauer, to have made any further approaches or moves in such circumstance? Could and would any self-respecting group of companies, such as Weitnauer, ever have made such approach or move?

The then Chairman, PERC, R.N. Asirwatham, in his letter dated February 14, 1996, has further stated that - *"The Commission decided on the morning of 18.01.1996 to give you one last opportunity to make a bid for 60% holding with a deadline no later than 4.30 p.m. Friday, January 19, 1996"*, whereas Weitnauer had been specifically called for discussions to seek further details on their proposal - which was a franchise concession, a better deal for the government with a substantial down payment of Rs. 570 million and with continuous growing earnings. From PERC's letter it would appear that the Commission itself had a meeting on January 18, 1996 and had so decided. If so, all the then members of the PERC would be responsible and accountable for questionably brushing aside an opportunity of making a very good deal, with a substantial down payment of Rs. 570 million, and with continuous growing earnings

for the government and the country. In the face of such very lucrative option, it is incomprehensible to understand as to, why did and what made PERC settle so hastily and hurriedly for the reduced minimum reserve price of Rs. 1000 mn. for an outright sale of 60 % shareholding of Orient Lanka Ltd., and with an option to purchase a further 37 % shareholding ?



PERC chairman's letter rejecting proposals

WEITNAUER BLUNTLY REFUTES CHAIRMAN PERC

Weitnauer had not been put off by such letter dated February 14, 1996 from the then Chairman, PERC, R.N. Asirwatham. Weitnauer had replied to the then Chairman, PERC, R.N. Asirwatham, with copies to members of PERC, refuting assertions that had been made by the then Chairman, PERC, R.N. Asirwatham, in his letter dated February 14, 1996, by their considered and comprehensive letter dated March 25, 1996, - *'to put the record straight as it were'*. Weitnauer ended its letter stating - *"The correct sequence of events and the undue hurry and urgency in brushing aside our proposal, that was very much more financially and economically beneficial to your country, make it quite difficult for us to understand your decision"*. Weitnauer's full letter to then Chairman, PERC, R.N. Asirwatham, contents of which are very revealing, is set out below:-

26 March 1996

Fax: (914) 326116
Original via DHL Courier

Your Reference: JMRB/AN/ep 1/0/95

Mr K N Asarwanthan, Chairman,
Public Enterprise Reform Commission of Sri Lanka
Block of Ceylon Building 30th Floor
No 4, Bank of Ceylon Mawatha
Colombo 1
Sri Lanka

Dear Sir

ORIENT LANKA LIMITED (OLM)

We write with reference to your letter dated 14 February 1996, wherein you intimate that you have 'set out the sequence of events, so that the decision taken by the Commission is clearly understood'.

The sequence of events did not commence on 26 October 1995 as so stated in your letter under reference and we wish to set out the correct sequence of events.

To your advertisement on 30 June 1995, being the third largest Duty Free operator in the world, we made an Application for pre-qualification. Consequently, on 21 August 1995, you informed us and other parties that we were pre-qualified.

Subsequently, on 29 August 1995, you invited offers from the pre-qualified parties, including us, for 60% of the shareholding of Orient Lanka Ltd. Offers were to close on 11 October 1995.

Thereafter, at a meeting of the pre-qualified parties on 25 September 1995, you introduced a new condition requiring a further undertaking that in addition to the 60%, another 30% of the shareholding should be purchased, if you did not succeed with the sale to the public of this 30% shareholding. On this additional commitment, you stipulated a 10% p.a. increase on the price offered for the 60% shareholding. This new 'put option' introduced suddenly by you had a bearing on the investment and commitment requiring approval from our Board of Directors, who had by then already approved the proposal without such 'put option'.

By this new additional condition, which was suddenly introduced by you without adequate notice and in a most non-business like manner, you surprised us to say the least. Such new condition was imposed on an adhoc basis just two weeks before the offer closing date of 11 October 1995. At this time, we had already gone through our corporate decision making processes for finalisation of the offer for 60%, having also received approval from our Board of Directors.

Weitnauer's letter to PERC chairman

"We write with reference to your Letter dated 14th February '96, wherein you intimate that you have 'set out the sequence of events, so that the decision taken by the Commission is clearly understood'. The sequence of events did not commence on 26th October '95 as so stated in your Letter under reference and we wish to set out the correct sequence of events.

To your advertisement on 30th June'95, being the third largest Duty Free operator in the world, we made an Application for pre-qualification. Consequently, on 21st August'95 you informed us and other parties that we were pre-qualified. Subsequently, on 29th August'95 you invited offers from the pre-qualified parties, including us, for 60% of the shareholding of Orient Lanka Ltd. Offers were to close on 11th October'95.

Thereafter, at a Meeting of the pre-qualified parties on 25th September'95, you introduced a new condition requiring a further undertaking, that in addition to the 60%, another 30% of the shareholding should be purchased, if you did not succeed with the sale to the public of this 30% shareholding. On this additional commitment, you stipulated a 10% p.a. increase on the price offered for the 60% shareholding. This new 'put option' introduced suddenly by you had a bearing on the investment and commitment requiring approval from our Board of Directors, who had by then already approved the proposal without such 'put option'. By this new additional condition, which was suddenly introduced by you without adequate notice and in a most non-business like manner, you surprised us to say the least. Such new condition was imposed on an adhoc basis just two weeks before the offer closing date of 11th October'95. At this time we had already gone through our corporate decision making processes for finalisation of the offer for 60%, having also received approval from our Board of Directors.

Under such circumstances, we immediately wrote to you by our Letter dated 30th September'95 (Appendix 1) making a reasonable request for you to extend the deadline by just one month to enable us to once again go through our corporate decision making processes and receive approval from our Board of Directors to accommodate your new condition to give an undertaking to purchase an additional 30% shareholding, since this was suddenly imposed by you without adequate notice. Regretfully, disregarding such circumstances, you declined the accommodation of such reasonable request for a month's extension, but went ahead with the closing of offers on 11th October'95 as scheduled. Therefore, on 11th October'95, we forwarded to you our Letter of protest(Appendix 2) advising you that under the given circumstances that we would not be participating and not submitting our offer. Your exercise of closing offers on 11th October'95 was followed up by your bid enhancement auction on 18th October'95. However, as admitted by you, this turned out to be a failure. We understand that on 17th October'95 you had intimated to the participating bidders that you had fixed a reserve price of Rs. 1200 Mn., which you subsequently reduced to Rs. 1000 Mn.

It is only thereafter, that you drew our attention to the news item of 28th October'95. This not being a formal notification, you followed it up with a formal advertisement on Saturday 11th November'95 inviting proposals from the pre-qualified parties and any other parties, stipulating that the offers will close just 4 days thereafter at 10.00 a.m. on Wednesday 15th November'95.

Having considered the background and your request for proposals demonstrating capability to develop the business, we made a proposal on the basis of a franchise operation in accordance with the normal international business practice in the Duty Free trade. As a privatisation proposal, we considered our proposal for a franchise operation in accordance with international practice to be the most appropriate form of privatisation of Orient Lanka Ltd. We considered that this was also in the best interest of your own country.

Our proposal dated 14th November'95 with an addendum dated 15th November'95 was delivered to you prior to the closing time stipulated in your advertisement of 11th November'95. Contrary to normal custom and practice, you did not however open the offers after the closure in the presence of the relevant parties.

Subsequently, by your Letter dated 5th December'95, whilst appreciating our continued interest, you informed us that the Commission after having reviewed the matters represented by us had decided to invite us for a Meeting with the Evaluation Committee appointed by the Government for the purpose of seeking further details of our proposal. This was not for a limited purpose as now referred to in paragraph 3 of your Letter under reference. Consequently, as further confirmed by your Letter dated 15th December'95, we visited Sri Lanka on Wednesday 17th January'96 looking forward to meeting the Evaluation Committee for detail discussions on our proposal. In accordance with normal business practice, we put in considerable effort to prepare a presentation package and a video presentation to afford the Members of the Evaluation Committee the necessary details and clarifications regarding ourselves and our proposal.

To say the least, we were quite disappointed. We only met you very briefly, and then you introduced Mr. J.M.S. Brito, Consultant Ministry of Finance, who merely discussed only the issue of a price for the sale of 60% shareholding and not the proposal we had forwarded, on which we had come prepared to make a professional presentation and to discuss with the Members of the Evaluation Committee as per your invitation. Quite disappointingly we left Sri Lanka immediately.

Mr. Brito, at the discussion, did intimate that if you were to proceed on the basis of a franchise as proposed by us, then that you would have to call for offers on such basis from all pre-qualified parties. We had no particular objection thereto, eventhough we were of the view that our proposal should have been considered as an acceptable privatisation proposal, which you already had with you for two months since 15th November'95 and had invited us for a discussion specifically thereon as referred to above. After our Meeting with you on Wednesday 17th June '96, on the next day i.e. Thursday 18th January'96,

after we had left Sri Lanka, Mr. Brito telephoned our local representative and requested that we confirm in writing by 4.30 p.m. the very next day i.e. Friday 19th January'96, that we were agreeable to purchasing 60% Shareholding of Orient Lanka Ltd. for Rs. 1000. Mn. Naturally, our local representative informed him that he had to communicate this to us since he had no mandate to make such commitment.

In view of the time difference, our local representative could only communicate with us the next day, Friday the 19th January'96. I intimated to him to inform Mr. Brito that we need to discuss the same with our corporate management in Bazel, Switzerland and requested him to also inform that we would respond during the course of the next week. However, we regret that when our local representative telephoned Mr. Brito early afternoon on Friday 19th January'96, Mr. Brito was at a Meeting and returned the call thereafter. Mr. Brito had intimated that no such time could be given and that the mandate given to him was to have written confirmation from us by 4.30 p.m. on Friday 19th January'96 and no later. The final paragraph in your Letter under reference accordingly is incorrect.

In following up, by our fax to you on Monday 22nd January'96 (Appendix 3) we confirmed our interest and requested time to respond. Our Letter was refaxed to you on 25th January'96 with a typographical correction effected. (Appendix 4). Notwithstanding the above, you had gone ahead and concluded the transaction, which our local representative had come to know of from the announcements in the electronic media in the evening on Monday, 22nd January'96. The above sets out correctly the sequence of events and we are not in agreement with what has been set out by you in your Letter under reference.

Our proposal was, to pay you immediately US \$ 10.4 Mn. for the purchase of stocks and an upfront advance, as compared with the Rs. 1,000 Mn. for an outright sale, [whereby you also handed over the stocks of US \$ 5.4 SL Rs. 300 Mn.] and for us to pay you 20% of the turnover, on the basis of a franchise for 10-years only, whilst we met all operational costs, including that of all staff. The total payments in our proposal for a 10-year franchise including the upfront payment of US \$ 10.4 Mn. amounted to US \$ 75.5 Mn. and discounted at 7% p.a. amounted to a net present value today of US \$ 54.8 Mn. from which US \$ 9.1 Mn. was reckoned as payable as license rentals to the Airport and Aviation Authority, and any change or revision of this reckoned level of license rental, could have been discussed and absorbed by us. *[If a rupee discount rate is to be applied, then future dollar projections of turnover would have to be converted at future rupee parity rates. You had provided 10% p.a. on the 'put option' rupee price].*

We had also clearly stated in our proposal that we were willing to further negotiate on our proposal and looked forward to doing so. But you refused to do so having called us for discussions. Consequent to receiving offers in October'95 you had a bid enhancement Meeting.

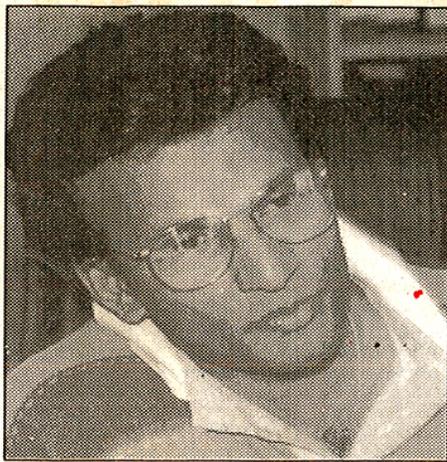
We had conservatively projected the future turnover at 10% p.a. increase based on the 1995 turnover, which year would be considered as not a very good year for turnover, whereas the average growth in turnover of Orient Lanka Ltd. over the last 3 years had been 40% p.a.(i.e. 1993 + 53%, 1994 + 44% and 1995 + 21%) We could have considered guaranteeing you a minimum payment upon discussions and negotiations. We had also proposed a substantial upfront payment.

Furthermore, if the turnover growth in the future was more than 10% p.a., which was likely to be so, considering the past growth pattern as given above and Sri Lanka's future growth, then the payment by us under the franchise arrangement inclusive of a substantial upfront payment would be very much more than the above levels, whilst you also had the ownership to re-sell the franchise time and again in the future at much higher levels of turnover. We cannot understand how you opted for a much lesser financial offer, that too for an outright sale, whereas on the basis of our proposal Orient Lanka Ltd. could have re-sold the franchise time and again in the future earning very valuable foreign exchange for the country.

The license of Orient Lanka Ltd. from the Airport and Aviation Authority to operate at the Colombo Airport would automatically get renewed with reasonable revision in rental on the regular payment of rentals by Orient Lanka Ltd. as had happened over the last 15 years, on the basis of legitimate expectation as would be legally upheld.

The correct sequence of events and the undue hurry and urgency in brushing aside our proposal that was very much more financially and economically beneficial to your country, make it quite difficult for us to understand your decision."

Weitnauer had copied their letter dated March 25, 1996 addressed to then Chairman PERC, R.N. Asirwatham, to all the then members of PERC -- Director General, BOI, Thilan Wijesinghe, Director General, SEC, Aritha Wikramanayaka, Managing Director, CTC Eagle Insurance, Chandra Jayaratne, present Chairman PERC/Deputy Secretary Treasury, P.B. Jayasundera, Secretary Ministry of Finance, B.C. Perera and also to J.M.S. Brito, Consultant Ministry of Finance.



• BOI Chairman Thilan Wijesinghe
— Another costly investment?

“All the then members of PERC would be responsible and accountable for questionably brushing aside an opportunity of making a very good deal, with a substantial down payment of Rs. 570 million and with continuous growth and earnings for the government”

Notwithstanding and disregarding the clear contents of such letter from Weitnauer dated March 25, 1996, PERC went ahead to conclude the sale of 60 % shareholding of Orient Lanka Ltd. to Alpha Airports Group PLC, UK, with an option to purchase a further 37 % shareholding, executing the Share Sale & Purchase Agreement 2 months thereafter on May 25, 1996. Why did not all these members of PERC, during such period of 2 months, consider the valid representations that had been made by Weitnauer and accordingly, apprise the Cabinet of Ministers of the factual position in the interest of the government and the country ?

On the very face of it, Weitnauer's proposal was an offer very much and far more beneficial to the government and the country. The consequent colossal continuous losses caused to the government and the country, by PERC's unexplained inaction and hasty action, are to the detriment of the consolidated fund, that belongs to the people of this country. In such context, a responsible government would necessarily have to take serious action thereon or would it be left to a member of the public to institute litigation in the public interest?

- Published in The Sunday Leader on 14.9.1997 by Nihal Sri Ameresekere under the pseudonym 'Bismark'