

BEFORE THE COMPETITION APPELLATE TRIBUNAL,  
ISLAMABAD

M/S DAWN CABLE

.... APPELLANT

VERSUS

COMPETITION COMMISSION OF PAKISTAN

.... RESPONDENT

Appeal No: 01/2022

**Present:** Justice Mamoon Rashid Sheikh, Chairperson.  
Muhammad Asghar Ch., Member Technical  
Raja Saad Sultan, Member Technical

For the Appellant: Barrister Syed Waqas Pirzada, Advocate

For Respondents: Mr. Daniyal Hassan, Advocate,  
Mr. Hassan Ahsan Mian, Law Officer.

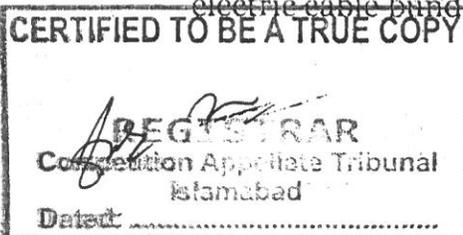
Dates of hearing: 12.01.2022, 08.03.2022, 30.03.2022,  
15.06.2022, 11.10.2022, 23.11.2022.  
08.12.2022.

**JUDGMENT**

**Raja Saad Sultan, Member Technical: -**

Through the instant appeal under Section 42 of Competition Act, 2010, the Appellant, M/S Dawn Cables, impugns the order dated 26-03-2019, passed by the learned Competition Commission of Pakistan ("Commission") for violation of Section 10 of the Competition Act, 2010, whereby a penalty of Rs. 500,000/- was imposed on the Appellant with the directions: (a) to modify all promotional materials and to disclose the presence and value of the token on each pack within a period of 60 days: (b) to issue public notices in at least two national English and Urdu newspapers with 15 days interval, regarding the presence of coupon within a period of 60 days: (c) compliance report to be filed by the respondents not later than 60 days and non-compliance shall further entail penal consequences.

2. The background leading to the filing of instant appeal is that the appellant M/S Dawn Cables is engaged in the business of electric cables manufacturing. The Appellant was involved in the practice of putting token/cash coupons in the packaging of their electric cable bundles without indicating this promotional scheme



*R. Saad*

on the packing or any other promotional material. The apprehension of the learned Commission was that the tokens have been inserted for the benefit of electricians rather than consumer.

3. The learned Competition Commission of Pakistan in pursuant to Suo-moto action initiated a formal enquiry, while exercising its powers under **Section 37(1) of the Competition Act, 2010**, for the alleged violation of **Section 10 of the Competition Act, 2010**.

4. The enquiry report concluded that the consumers were being misled by omitting the material information about the presence of cash coupons in the packaging of electric cable bundles. This further gave the undertaking an unfair competitive edge as a result of withholding such material information. Therefore, this constitutes a violation of **Section 10(1), 10(2)(a) & (b) of the Competition Act, 2010**.

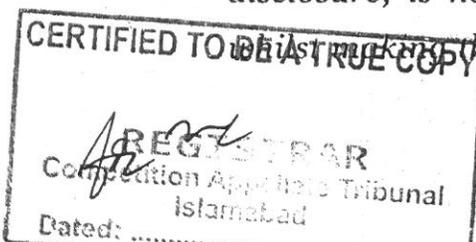
5. In view of the enquiry report, proceedings were initiated against the Appellant under **Section 30 of the Competition Act, 2010**, thereafter, a show cause notice dated 18-11-2016 was issued by the learned Commission to the Appellant. In show cause notice the learned Commission has alleged the following;

*"Whereas, in terms of the Enquiry Report in general and paragraphs 70 to 84 in particular, the inclusion of coupons in the bundles without due disclosure, is not only likely to mislead the end consumers while making their purchase decision but also such omission of material information appears to give an undue competitive edge to the Undertaking over its competitors, and*

*Whereas, in terms of the Enquiry Report in general and paragraphs 94 and 95 in particular, it appears that the Undertaking has omitted to disclose material information in respect of the coupons in bundles, which prima facie constitutes a violation of Section 10 of the Act, and*

*Whereas, the inclusion of coupons in the bundles without due disclosure, is not only likely to mislead the end consumers*

*and their purchase decision, but also such omission*



*[Handwritten signature]*

*of material information is capable of harming the business interests of competitors, which prima facie constitutes a violation of Section 10 of the Act, and*

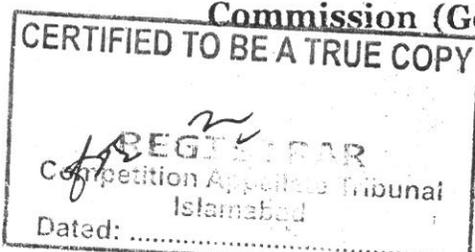
*Whereas, in terms of the Enquiry Report in general and paragraphs 124 to 127 in particular, the omission of aforementioned information during the course of marketing and advertising by the Undertaking is prima facie in violation of Section 10(2)(a) and (b) read with Section 10(1) of the Act”;*

6. The Appellant submitted its reply to show cause notice, whereafter an opportunity of hearing was also provided to the representative of appellant by the learned Commission. The core issue before the learned Commission was,

***“Whether the practice of inserting tokens in the wire cable bundles without due disclosure constitutes deceptive marketing practice under Section 10 of the Act”***

7. Learned Counsel for the Appellant, submitted that the impugned order is against the law and contrary to the facts of the case. This practice of inserting cash coupons in the packaging of electric cable bundles was stopped, when the Commission’s enquiry report was received. He argued that the Appellant even during the proceedings before the Commission remained fully cooperative and also clarified vide letter dated 29-11-2016, that this practice of putting cash coupons was due to error and there was no intention of the Appellant to engage in deceptive marketing practice.

8. The learned Counsel for the Appellant further submits, that the Appellant had filed Commitment before the Commission pursuant to **Regulation 30 (Part IV) of Competition Commission (General Enforcement) Regulations, 2007**. He further argued that the Commission, while passing the impugned order did not consider the Appellant Commitment filed before the Commission. The impugned order is in absolute disregard and gross violation of **Regulation 37 of Competition Commission (General Enforcement) Regulations, 2007**.

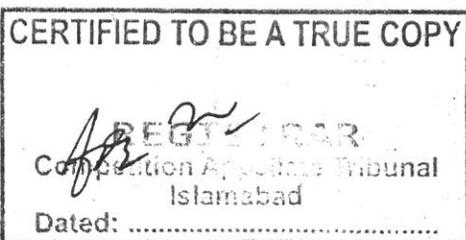


Learned Counsel placed on record the annual audit reports for the years (2015 – 2021) and tax returns for the years (2014 – 2020). He submits that the Commission, keeping in view the commitment filed by the appellant, could have imposed a penalty up to 1% of annual turnover in terms of **Regulation 37 of Competition Commission (General Enforcement) Regulations 2007**. However, the Commission did not ask for the annual turnover of the Appellant in order to decide the amount of penalty. The learned Counsel finally submits that the penalty was imposed in an arbitrary manner, hence the impugned order is liable to be set-aside.

9. Learned Counsel for the Competition Commission of Pakistan (“**Commission**”), inter alia, argued that pursuant to Suo moto action, an enquiry was initiated by the Commission under **Section 37(1) of the Competition Act, 2010** for the alleged violation of **Section 10 of the Competition Act, 2010**. He further submits that the enquiry report found the Appellant involved in the practice of inserting cash coupons in the packaging of electric cable bundles without proper disclosure. He contends that the appellant had filed Commitment in which they had admitted this practice. The impugned order was passed taking into consideration the Commitment filed by the Appellant. Further submits that a lesser penalty of Rs. 500,000 was imposed on the Appellant in comparison to those undertakings of the same industry, who had not adopted a compliance-oriented approach and were imposed the penalty of Rs.5 million. Therefore, the learned Counsel has prayed for the dismissal of this appeal.

10. Arguments advanced by the learned Counsel for the parties have been heard and the documents placed on record perused with their assistance.

11. The Appellant has raised various other grounds in this appeal, however during the arguments has only relied on the ground that, while passing the impugned order, the Commission has not taken into account the Commitment filed by the Appellant.



12. Record reveals that upon initiation of enquiry, the Appellant was asked to provide relevant information vide letter dated 30-07-2015. **Section 36 of the Act of 2010, read with Rule 23 of Competition Commission (General Enforcement) Regulations, 2007**, requires the learned Commission to call for information from the concerned undertaking during the enquiry proceedings. The Appellant had submitted the required information vide its reply dated 19-08-2015. Perusal of enquiry report indicates that the Appellant had admitted that they do insert cash coupons of Rs.20 on random basis in only one category i.e., size 3/029 electric cable bundle.

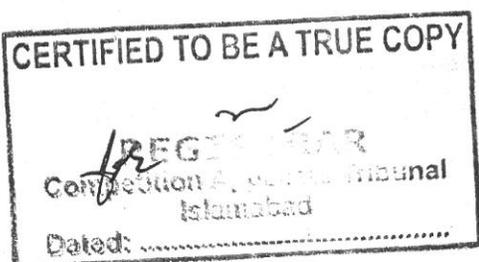
13. Based on the findings of enquiry committee, a show cause notice was issued to the Appellant and proceedings were initiated under **Section 30 of the Act**. The reply to show cause notice was submitted and an opportunity of hearing was also provided to the Appellant. In their reply, they had informed the learned Commission, that they do offer coupons only in one category on random basis for all customers and electricians. It was further declared that following the findings of enquiry report, they had ceased this practice one year ago.

14. The **Competition Act of 2010**, ensures that all commercial and economic activity is conducted fairly and without anti-competitive behavior, in order to promote increased economic efficiency and to protect consumers. The Act of 2010, prohibits the undertakings from such actions, which constitute the abuse of market dominance, prohibited agreements and deceptive marketing practices.

15. **Section 10 of the Competition Act, 2010** deals with deceptive marketing practices and reads as follows,

***"Deceptive marketing practices. (1) No undertaking shall enter into deceptive marketing practices.***

***(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to;***



~~Signature~~ S.P.

(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods”;

(c).....

(d).....

16. In view of the above provision, marketing practice is deemed to be deceptive, where it provides false or misleading information to consumers. Under the Black’s Law Dictionary, false means ‘untrue, erroneous and deceitful”. On the other hand, misleading is defined as “delusive, calculated to lead astray or to lead into error”. Misleading information can take the form of oral or written statements or representations, which tends to misguide consumers because of it being vague. Misleading information may or may not be deliberate and it depends on the conduct of a party. The Federal Trade Commission (FTC) of U.S, in order to prove deception, has enumerated the important ingredient which include, “**firstly**, the representation or practice which is likely to mislead the consumer, **secondly**, consumer must be acting reasonable under the circumstances and **thirdly**, the representation or omission must be a material one”.

17. The Appellant inserts cash coupons in the packaging of electric cable bundle without proper disclosure. In order to make a purchase decision, this information must be considered as material information that could impact the consumers purchase decision, who is acting reasonably under the circumstances. Material information about the product includes details such as product specifications, pricing, product benefits and warranties. However, the Appellant has not disclosed the presence of cash coupons on products packing or on any other promotional material. The Appellant has omitted this material information with

the intention of deceiving the consumer in order to benefit the

CERTIFIED TO BE A TRUE COPY  
REGISTRAR  
Consumer Appellate Tribunal  
Islamabad  
Dated: .....

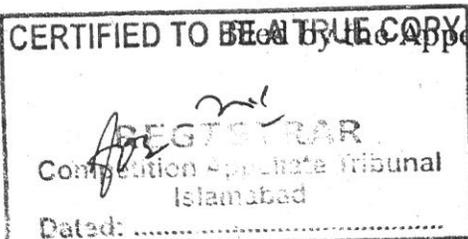
electricians, who were the primary source of the consumers purchase decision. Moreover, this practice of non-disclosure of cash coupons is unfortunately a common practice in the entire electric cable industry. The learned Commission in the impugned order took view that without the knowledge of any rebate price, an ordinary consumer would not be able to differentiate between the different cables at the time of purchase. Therefore, this omission of material information would be considered as deceptive marketing practice. The learned Commission has relied on the following case law;

***International Harvester Co, 104 F.T.C. 949 (1058), Cliffdale Associates, Inc. 103 F.T.C. 110 (1984), American Home Products, 98 F.T.C. 136, 370 (1981).***

We have gone through the above case law, and convinced with the findings in the impugned order. The Appellant marketing practice would be considered as misleading, as it lacks a reasonable basis as to the price and properties of the product. The Appellant in their reply before the learned Commission has also admitted this practice of putting cash coupons without any disclosure on its packing. Record further reveals, that the appellant had filed Commitment before the learned Commission vide an affidavit dated, 23-07-2018. Therefore, in view of the above facts, the Appellant has resorted to deceptive marketing practice by disseminating a misleading information to consumer. Hence, this would constitute a violation of **Section 10(2)(b) of the Competition Act, 2010.**

18. When undertakings advertise their products without reasonable basis, this puts them at an unfair advantage. The omission of this material information would be detrimental to the business interests of other undertakings. Therefore, this practice of inserting cash coupons without proper disclosure also contravenes **Sections 10(2)(a) of the Competition Act, 2010.**

19. The learned counsel for the Appellant during the arguments has only argued the ground that the Commitment was



*[Handwritten signature]*

Commission. However, while passing the impugned order the same was not taken into consideration and the penalty of Rs.500,000 was imposed illegally. Perusal of the record reveals that the Appellant had filed Commitment before the learned Commission pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007**, in which the appellant had admitted, that they do insert cash coupons of Rs.20 on random basis without due disclosures in only one category i.e., size 3/029. However, submits that this practice was stopped once they had received the enquiry report.

20. **Regulation 33 & 37 of Competition Commission (General Enforcement Regulations) 2007** are reproduced herein below;

**Regulation 33. Favourable Decisions:**

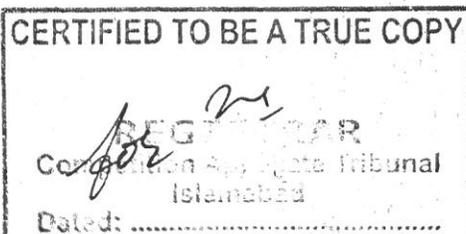
- (1) *"The Commission may, at its discretion, issue a favourable decision where commitments have been accepted".*
- (2) *"The Commission may revoke the favourable decision, if any of the commitments accepted have been breached".*

**Regulation 37. Favourable Decisions of the Commission:**

- (1) *"Where the Commission makes a favourable decision, it shall limit itself to imposing a penalty of upto PKR 7,500,000 or 1% of annual turnover of the undertaking for each violation on the concerned undertaking."*

In light of the aforementioned Regulations, when the Commission accepts the Commitment, penalty imposed shall not exceed 1% of annual turnover of the Appellant or Rs. 75,00,000.

21. In order to impose penalty, the important factors which need to be considered are, the seriousness of the infringement and the requirement for general deterrence. The learned Commission is also further required to protect the relevant market and consumer. In the present case, the infringement involved not just one undertaking but rather, the entire electric cable manufacturing sector. Omission of this material information is a



*[Signature]*

serious infringement, which is likely to mislead an ordinary consumer, acting reasonably in the circumstances.

22. Perusal of the impugned order indicates, that those undertakings who had not appeared before the learned Commission, a penalty of Rs. 5 million was imposed on them. Whereas, the Appellant and other undertakings, who had filed Commitment, a lesser penalty of Rs. 500,000 was imposed on the them.

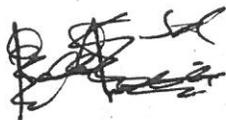
23. The penalty was imposed by the learned Commission taking into account the Appellant Commitment and their market conduct. We are not convinced with the Appellant contention that lenient view was not taken by the Commission and excessive penalty was imposed.

24. We are of the view, that the learned Commission has appropriately considered the Commitment filed by the Appellant and has imposed a minimum penalty in accordance with **Regulation 37 of Part IV of Competition Commission (General Enforcement) Regulations, 2007**, as compared to other undertakings of the same industry, who did not co-operate with the Commission.

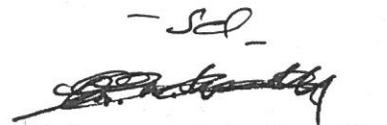
25. In view of above, we are of the considered view that the instant appeal is devoid of any merits, hence, accordingly dismissed.

-sd-  

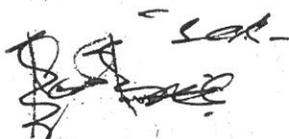

**Justice Mamoon Rashid Sheikh**  
Chairperson



**Raja Saad Sultan**  
Member Technical-II

-sd-  
  
**Muhammad Asghar Ch.**  
Member Technical-I

**Announced in open Court**  
**14.07.2023**

-sd-  


**Raja Saad Sultan**  
Member Technical

