



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO M/S HYUNDAI NISHAT  
MOTOR PRIVATE LIMITED FOR VIOLATION OF SECTION 10 OF THE  
COMPETITION ACT, 2010**

**File No. 382/HYUNDAI TUSCON/OFT/CCP/2020**

Dates of Hearing:

14<sup>th</sup> June, 2021  
12<sup>th</sup> March, 2025



Commission:

Dr. Kabir Ahmed Sidhu  
**Chairman**

Present on Behalf of:

Ms. Bushra Naz Malik  
**Member**

M/s Hyundai Nishat Motor (Private) Limited

Advocate Mr. Rashid Sadiq  
R&S Corporate Advisory

## ORDER

1. Through this order the Competition of Commission of Pakistan (the “**Commission**”) shall dispose of the proceedings initiated under Section 30 of the Competition Act, 2010 (the “**Act**”) vide Show Cause Notice No. 02/2021 dated 5.03.2021 (the “**SCN**”), issued to M/s Hyundai Nishat Motor (Private) Limited for *prima facie* violation of Section 10 of the Act, which prohibits deceptive marketing practices.

## FACTUAL BACKGROUND

2. M/s Hyundai Nishat Motor (hereinafter the “**Respondent**”), is a joint venture among three leading international entities namely Nishat Group, Sojitz Corporation (Japan) and Millat Tractors Limited Hyundai Motor Company (Korea). The Respondent, through the aforesaid joint venture, is engaged in the manufacturing, marketing and distribution of Hyundai’s product line in Pakistan and qualifies as an Undertaking as defined in Section 2(1)(q) of the Act.
3. The Respondent launched its new Sports Utility Vehicle (SUV) Hyundai Tucson, via Facebook live streaming event held on 11.08.2020, at 7:30 PM. During the live session, the Respondent announced an introductory price of PKR 4,899,000 (Four Million Eight Hundred Ninety Nine Thousand only) for the GLS/FWD model and PKR 5,399,000 (Five Million Three Hundred Ninety Nine Thousand only) for the ULTIMATE/AWD model of the SUV Hyundai Tucson.
4. The Commission observed that while the introductory prices were prominently displayed in large font in the advertisement on print and social media and the disclaimer stating “for limited time period only” was printed in a much smaller font, making it nearly illegible.
5. It was further noted by the Commission that the initial booking period for the Hyundai Tucson lasted less than 24 hours. Following this brief period, the Respondent increased the price of both variants by PKR 200,000 (Two Hundred Thousand only) and the new prices were set at PKR 5,099,000 (Five Million Ninety Nine Thousand) for the GLS/FWD model and PKR



5,599,000 (Five Million Five Hundred Ninety Nine Thousand only) for the ULTIMATE/AWD model.

6. Subsequently, within 24 hours of the event, the Respondent declared that all units available at the introductory price had been booked; the introductory price listing was removed from the Respondent's official website and other social media platforms (i.e. Facebook and Instagram).
7. The Commission took *suo moto* notice of the Respondent's advertisement by initiating the proceedings under Section 37(1) of the Act and in exercise of the powers granted under Section 28(2) of the Act, the Commission appointed enquiry officers (collectively referred to as the "**Enquiry Committee**") to investigate the matter for potential violations of Section 10 of the Act, which prohibits deceptive marketing practices, and to submit a report to the Commission.

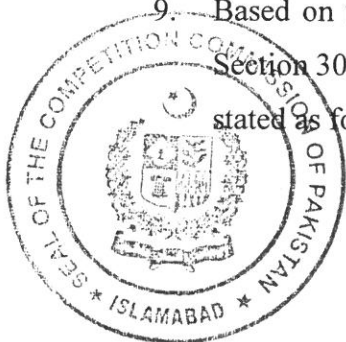
#### ENQUIRY AND SHOWCAUSE NOTICE

8. The Enquiry Committee appointed by the Commission submitted its Enquiry Report on 05.01.2021 (the "**Enquiry Report**"), which concluded as follows:

*"61. In view of the position narrated in the preceding paragraphs and particularly analyzing the case of Hyundai Tucson in light of international and local practices, the Undertaking is involved in distribution of misleading information to consumers, including the distribution of information lacking a reasonable basis related to price, characteristics, properties in, prima facie, violation of Section 10(1) in General and in Particular Section 10(2)(b) of the Act.*

*62. Besides the behaviour of Undertaking, it is also capable of harming the business interest of other Undertakings, which, prima facie, amounts to violation of Section 10(1) in general and in particular Section 10(2)(a) of the Act."*

9. Based on the findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act and issued the SCN to the Respondent on 05.03.2021, which, *inter alia*, stated as follows:



*"2. **WHEREAS**, the Undertaking, via Facebook live streaming and through print media announced introductory price of PKR 4,899,000 for the 'Hyundai Tucson' GLS/FWD and PKR 5,399,000 for the ULTIMATE/AWD model and this advertisement, whereas the price of each unit was shown in a large font and the disclaimer "for a limited period only" was mentioned in very small, illegible font and in inconspicuous position of the disclaimer had the potential to mislead the consumers; and*

*3. **WHEREAS**, it also came to the notice of the Competition Commission of Pakistan (the '**Commission**') that the initial booking period lasted only for a period of less than 24 hrs and the price for 'Hyundai Tucson' was enhanced by PKR 200,000 for both the variants and fixed at PKR 5,099,000 for GLS/FWD and PKR 5,599,000 for the ULTIMATE/AWD model and the introductory price was also removed from its website and social media pages; and*

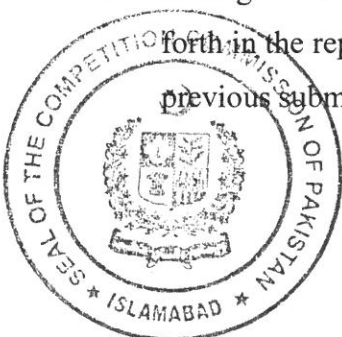
*6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 32 to 54 in particular, it appears that the Undertaking did not clearly indicate (i) the period in which the introductory price would apply (ii) the number of vehicles available at the introductory price point, thereby disseminating misleading information which, prima facie, constitutes a violation of Section 10(1) in general read with Section 10(2)(b) of the Act; and*

*7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 32 to 56 in particular, it appears that the Undertaking's misleading advertisement had the ability to influence the consumers decision making process while choosing between different alternatives at the time of purchase, giving the Undertaking a competitive edge, which is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10(1) in general read with Section 10(2)(a) of the Act; and ... "*

## HEARING AND SUBMISSIONS OF THE RESPONDENT

10. The Respondent submitted its written reply to the SCN on 31.05.2021. Subsequently, the Commission ensured due process by affording the Respondent an opportunity of hearing and the Respondent pleaded his case during the course of hearings held on 14.06.2021 and 12.03.2025 before the Bench of the Commission. The Respondent was represented by Advocate Rashid Sadiq of R&S Corporate Advisory.

11. During the hearing, the learned counsel for the Respondent reiterated the stance already put forth in the reply to the SCN. The Respondent primarily defended its position in line with its previous submissions, however, no substantial new arguments or documentary evidence were



presented to refute the allegations or to demonstrate corrective measures taken to address the concerns raised in the SCN.

12. The objections and submissions of the Respondent are summarized herein below:

- (i) The Respondent submitted that the provision of Section 37 of the Act empower the Commission, to the exclusion of any other officer of the Commission, to initiate enquiries on its own motion, or, in specified circumstances, at the behest of the Federal Government or a complainant. The Commission has been established as collegiate body pursuant to provisions of section 12 of the Act and, therefore, it is required to exercise the power to initiate any proposed enquiries as a collegiate body through a reasoned order. The Respondent alleged that the letter dated 16.09.2020 bearing File No. 382/HYUNDAI TUCSON/OFT/CCP/2020, relies on some undisclosed communication issued by the Commission to the Enquiry Officers to state that “*the [Commission] has initiated a formal enquiry against the Company.*”
- (ii) The Respondent also submitted that rules of natural justice are to be applied to administrative proceedings to be conducted by the Commission and that, in the case at hand, it appears that the Commission might not have considered such rules where it is the enquiry officers themselves informing the Company (i.e. Respondent) of the apparent reason for the initiation of ‘*formal enquiry*’.
- (iii) The Respondent further submitted that the reasons for the formal enquiry are being provided by the enquiry officers themselves, apparently on behalf of the Commission, however, no underlying inquiry order of the Commission for initiation of the enquiry has been shared nor has any reference been made to laws or regulation(s) that may allow enquiry officers to speak on behalf of the Commission.
- (iv) The Respondent submitted that the Commission has not proceeded under its *suo moto* jurisdiction as there are several instances of advertisements identical to the one being objected to in the instant matter where same version of the phrase “limited time offer” has been used and no timeframe has been provided for the duration of the offer or the

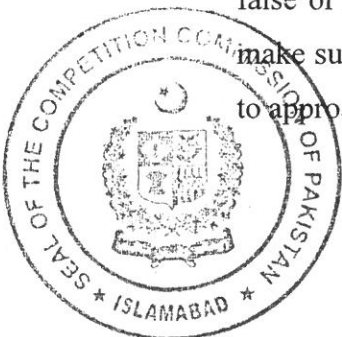


availability of the product accompanied by abundant fine print. The Respondent then referred to ads from Honda and Toyota and submitted that those particular ads give the impression that Toyota is offering a car for less than 50,000/- PKR and Honda is offering free cars at first glance.

(v) The Respondent also objected that the Enquiry Report has sought to distinguish M/s Kia Lucky Motors (**KIA**) advertisement from Respondent's advertisement through paragraph 35, however it appears that the same standards for advertisements are not applied by the Commission to KIA as are being applied to the Respondent. The advertisement of KIA, provided on page 8 of the Enquiry Report, neither provides the time frame for the introductory price nor the number of units available to at the introductory price, yet the Respondent is expected to comply with the this unsaid standard.

(vi) The Respondent also referred to the advertisement on page 9 of the Enquiry Report, and submitted that while the word "ORDER" may be legible and the words surrounding it may be made out by zooming in, the number of units available under this offer has not been clarified and as per information of the Respondent, even KIA had limited units of its newly launched vehicle, however different standards are being used for two competing undertakings under its administrative jurisdiction by the Commission which constitutes discriminatory treatment against the Respondent.

(vii) The Respondent, while referring to the order passed by the Commission **In the matter of Show Cause Notice Issued to Paint Manufacturers, 2012 CLD 808** (the "**Paint Order 2012**"), submitted that in the absence of a developed line of approach to the application of competition law in Pakistani environment, it would be entirely inconsistent, unfair and unreasonable to seek to penalize the Respondent for a practice which is commonly and regularly accepted in the car distribution market even by consumers. It is, therefore, incumbent upon the Commission to establish its own parameters for what constitutes false or misleading statements in the context of Pakistani car distribution market and make such guidance readily available to the public and the undertakings before seeking to approach the issue in a manner that has the result of reprimanding a single entity to the



detriment of the larger sector that the Commission is tasked with regulating in accordance with the spirit of competition law as applicable in Pakistan.

(viii) The Respondent denied that the disclaimer in its advertisement is in very small, illegible font or inconspicuous position or constituted a format that was a departure from the Commission's guidance on industry norms which the Commission provided through support of the industry norms being practiced by participating undertakings. It also denied that the disclaimer had the potential to mislead the consumers as the relevant facts were shared with the consumers at the time of bookings and also a few customers sought refunds which were duly honored without any deduction. The Respondent submitted that the advertisement in question occupied half of a full page newspaper and the font for disclaimers matched the size of the font used in articles by the newspaper, therefore it could not be said that the font was illegible.

(ix) The Respondent submitted that it did not expect to sell out the number of units reserved for the initial booking period in less than 24 hours and it was not the malicious intent of the Respondent to "bait" consumers as alleged in the SCN read with Enquiry Report. The Respondent also submitted that 300 units were allocated to be sold for the introductory price.

(x) The Respondent submitted that in accordance with the prevalent automobile industry norms, it did not indicate the time period during which the introductory price would apply or the number of vehicles to which such price would apply, however, such practice cannot be interpreted as "disseminating misleading information" where the audience is accustomed to the automobile industry marketing norms prevalent in Pakistan and is in the habit of carrying out a market survey before such large expenditures and they are fully informed at the time of bookings.

(xi) The Respondent submitted that the Commission should be mindful of the practices implemented by other market players and marketing environment of Pakistan when analyzing "the overall net general impression" of the advertisement.



- (xii) The Respondent referred to the Commission's order in *China Mobile Pak Limited and Pakistan Telecom Mobile Limited 2010 CLD 1478 (China Mobile case)* and submitted that if the parameters of definitions of false and misleading information were to be applied to the case at hand, the Respondent's advertisement was neither false, where it claimed to be for a limited time period, nor misleading, where given the marketing practices employed by the automobile industry of Pakistan, price fluctuations and limited availability are expected when disclaimers of the nature issued by the Respondent are provided.
- (xiii) The Respondent further contended that, at the time of publishing the advertisement, no specific guidelines were in place to outline the applicable parameters. Therefore, it asserts that it could not have known the standards to follow and, as a result, did not commit any violation. Moreover, the Respondent submitted that the Commission has adopted a compliance-oriented approach in similar cases in the past and has not imposed fines on undertakings. Therefore, the Respondent expects a similar decision in this case as well.
- (xiv) The Respondent further submitted that the advertisement in question does not have "the ability to influence the consumer decision making process while choosing between different alternatives at the time of purchase", as alleged. This is because the audience market which consists of Pakistani citizens has experience of prevalent market advertising norms from which the Respondent did not deviate. Moreover, complete information was provided to all the consumers at the time of booking.

## ISSUES

13. Keeping in view the oral and written submissions of the Respondent, the material/evidence placed on the record and the applicable law in the matter, the following issues are framed for the purpose of deliberation and determination of the Bench:

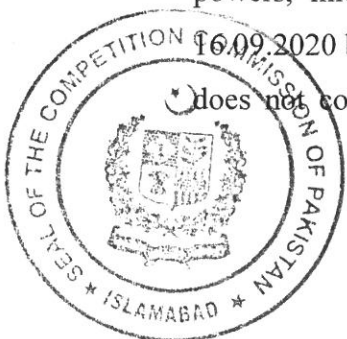


***Whether the Respondent has resorted to deceptive marketing practices by distributing false and misleading information in violation of Section 10(1) read with Section 10(2)(b) of the Act?***

(II) *Whether the false and misleading information distributed by the Respondent was capable of harming the business interests of any other undertaking(s) in terms of Section 10(2)(a) of the Act.*

## ANALYSIS

14. The Bench shall examine the objections raised by the Respondent prior to analyzing the above-mentioned issues. These objections, as put forth by the Counsel, will be examined in the following paragraphs.
15. The Respondent “has raised an objection to the initiation of the enquiry under Section 37 of the Act by arguing that the power to initiate an enquiry is vested exclusively in the Commission as a collegiate body and must be exercised through a reasoned order.” The Respondent further alleges “that the letter dated 16.09.2020 (File No. 382/HYUNDAI TUCSON/OFT/CCP/2020) relies on undisclosed communication issued by the Commission to the Enquiry Officers.”
16. The Bench is of the considered view that, the Respondent’s objection is legally untenable and contrary to the statutory scheme of the Act. Section 37 of the Act grants the Commission the authority to initiate enquiries *suo moto* or upon a complaint from the Federal Government or a complainant.
17. Additionally, Section 28 of the Act explicitly empowers the Commission to delegate any of its functions or powers. The delegation of functions is a necessary mechanism to ensure the effective operation of the Commission, allowing it to assign specific tasks, including the initiation of an enquiry, to designated officers. The Commission duly delegated the authority to the Head of Department of the Office of Fair Trade, who, in exercise of those delegated powers, initiated the enquiry against the Respondent. The issuance of the letter dated 16.09.2020 by the Enquiry Committee merely reflects the execution of delegated powers and does not constitute procedural impropriety. Therefore, the Commission does not have to

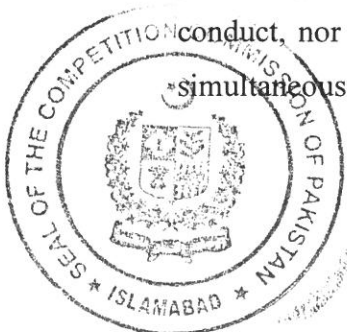


exercise all of its powers as collegiate body. Moreover, the Commission can delegate some of its powers to any of its officers.

18. This position has also been upheld by the Lahore High Court in case titled **Meezan Beverages (Pvt.) Limited v. Competition Commission of Pakistan and others** reported as 2024 CLD 1107. The court categorically affirmed that:

*"The Commission is empowered under Section 28(2) of the Act to delegate all or any of its functions and powers to any of its Members or officers as it deems fit."*

19. The Enquiry Committee, therefore, acted under the delegated authority of the Commission, and their actions in initiating the enquiry are well within the statutory framework. Therefore, any challenge to the validity of delegated functions, is without legal basis.
20. The Respondent's argument that an "undisclosed communication" served as the basis for the enquiry is also devoid of merit. Regulatory bodies routinely issue internal directives and authorizations that do not require disclosure at the initial stage of an enquiry. The Respondent has failed to demonstrate any legal flaws in the delegation process or that any prejudice has been caused as a result of such delegation.
21. In light of the foregoing deliberations, the Bench finds that the initiation of the enquiry against the Respondent is in full compliance with the Act and applicable rules and regulations. The Commission's authority to delegate its functions under Section 28 reinforces the validity of the enquiry's initiation, and no procedural irregularity has been established. Accordingly, the Bench dismisses the Respondent's objection.
22. The Bench also dismisses the Respondent's contention that the Commission has not exercised its *suo moto* powers against other car manufacturers/importers/advertisers who have used similar phrases/words in their advertisements. The Bench analyses that the existence of other potentially misleading advertisements does not diminish the illegality of the Respondent's conduct, nor does it provide a valid defense. The Commission is neither bound to initiate simultaneous actions against all undertakings nor precluded from taking action against a

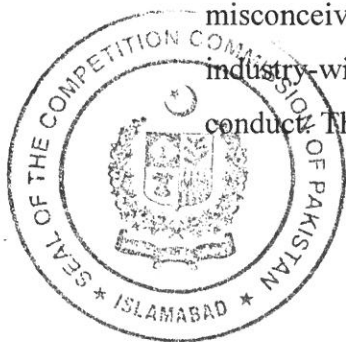


single undertaking where a violation of its Act has been observed. Moreover, the Competition law enforcement does not require uniform initiation of proceedings against all potentially infringing parties at the same time. Hence, the Commission, may proceed against violations as and when they are brought to light, without being obligated to take identical action against all the market participants.

23. The Respondent further argued that the standards applied to its advertisement have not been applied to advertisements by other undertakings such as Honda, Toyota and KIA, thus constituting discriminatory treatment. The Respondent has failed to provide any evidence to substantiate its claim of discriminatory treatment. The advertisements presented by the Respondent for competing car brands in its reply dated 31.05.2021 are distinguishable from the impugned advertisements for the following reasons:

- (i) Honda Advertisement: The Honda advertisement, celebrating its anniversary, offered free add-ons such as an extended warranty and navigation/GPS system. The disclaimer was clearly legible and prominently displayed, specifying that the offer was for a limited time and subject to terms and conditions.
- (ii) Toyota Advertisement: The Toyota advertisement explicitly stated that its free registration offer for the Corolla XLI was valid only for January. Moreover, the installment plan of less than PKR 50,000 per month was accompanied by a full disclaimer, specifying that the offer was applicable only to XLI customers purchasing the vehicle with cash, and subject to terms and conditions.
- (iii) As far as the Respondent's comparison with KIA's advertisement is concerned, the Bench does not find the Enquiry Report's findings on this point to be conclusive. It is observed that KIA's introductory price offer was valid for 12 days, whereas the Respondent withdrew its advertised introductory price within 24 hours.

24. The Bench further affirms that the Respondent's reliance on the Paints Order 2012 is misconceived and taken out of context. In that Order, the Commission explicitly held that industry-wide deceptive practices do not serve as a justification for misleading marketing conduct. The relevant portion of the Order states:



*“...in the absence of any form of communication/indication of the presence of the token, the consumer who directly incurs the price of the paint inclusive of the price of the token is the one who suffers the eventual harm if the benefit of the token is reaped by another consumer along the supply chain. Hence, deception lies in failure to disclose the presence along with the value of the token card by the undertakings...*

*... Accordingly, there is a duty on the undertakings to disclose information about tokens and take necessary measures to ensure that the benefit is accrued to the consumer otherwise it would unreasonably place a higher onus on the consumer rather than the undertaking which would be contrary to the intent of the law... the token is a form of price advantage and it is the consumers' right to avail the monetary benefit derived from it and hence the undertakings should disclose the same in terms of section 10, as it would otherwise constitute deceptive marketing... it has been established that it is an industry wide phenomenon and the omission of material information regarding tokens amounts to deceptive marketing under section 10 of the Act.”*

25. In view of the above, it is evident that the Commission determined that industry-wide deceptive practices do not exempt an undertaking's individual responsibility under the law. Rather than serving as a defense, the existence of an industry-wide phenomenon reinforced the need for regulatory enforcement. Thus, the Respondent's reliance on this precedent is misplaced and does not support its contention.
26. Having addressed objections raised by the Respondent, the Bench shall now revert to the core allegation, whether the Respondent's advertisement regarding the introductory price of Hyundai Tucson was misleading and constituted deceptive marketing under Section 10(1) read with Section 10(2)(b) of the Act.

***(I) Whether the Respondent has resorted to deceptive marketing practices by distributing false and misleading information in violation of Section 10 (1) read with Section 10(2)(b) of the Act?***

27. Section 10 of the Act prohibits 'deceptive marketing practices', and serves to protect both consumer and competition interests. For ease of reference, relevant excerpts of Section 10 are reproduced herein below:



**“10. 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:

- (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; ...”

28. Section 10(2)(b) is relevant in evaluating whether the Respondent’s advertisement contained false or misleading information to consumers and whether claims/representations made in the advertisement lacked a reasonable basis concerning the characteristics, suitability for use, price, or other essential aspects of the advertised product. The key question before the Bench is whether the Respondent’s marketing material misled consumers by providing inaccurate or unsubstantiated claims or omitted material information, thereby constituting a violation of the Section 10 of the Act.

29. The Bench deems it appropriate to refer to the earlier orders of the Commission pertaining to the analytical scheme of the alleged infringement(s) under Section 10 of the Act. In **China Mobile case**, while referring to the judgment of Standard Oil of Calif 84 F.T.C 1401, the Commission has held as follows:

*“... in evaluating advertising representation, the [Commission] is required to look at the complete advertisement and formulate our opinion on the basis of general net impression conveyed by them and not on isolated scripts. As a rule, the above-stated view was upheld by the U.S. Court of Appeal in the matter of Beneficiary Corp v F.T.C, 542 F. 2d 611 (3<sup>rd</sup> Cir., 1976) in the following words ‘the tendency of the advertising to deceive [or mislead] must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from the context ...’.”*



In **China Mobile case** the Commission also made the following important observations with regard to “consumers”:

*“the term ‘consumer’ under Section 10 of the [Ordinance] is to be construed as an ‘ordinary consumer’ but need not be necessarily be restricted to the end consumer of the goods or services”*

False and misleading information has been interpreted by the Commission to include:

*False information: "oral or written statements or representations that are (a) contrary to the truth or fact and not in accordance with reality or actuality; ..."*

*Misleading information: "may essentially include oral or written statement or representation that are: (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought or judgement (c) tends to misinform or misguide owing to vagueness or any omission (d) may or may not be deliberate or conscious..."*

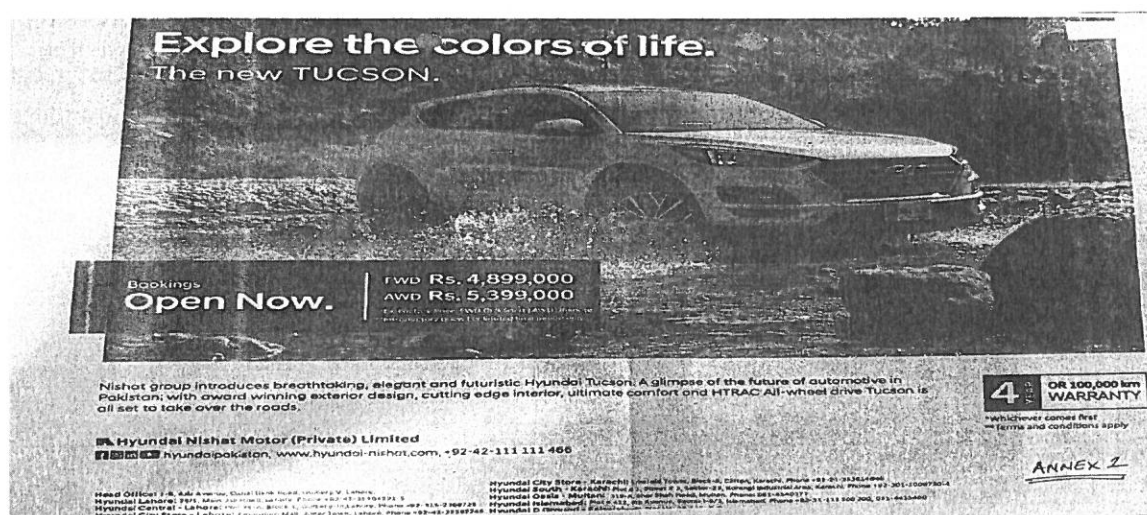
31. Moreover, while evaluating the 'net general impression' or the dominant message, the Bench may also examines express or implied representations contained in an advertisement. Additionally, neither proof of intent to disseminate<sup>1</sup>, nor evidence that consumers have actually been misled, is required for an act or omission to constitute violations under Section 10(2)(b) of the Act.
32. The bench also considered whether the information disseminated "lacks a reasonable basis". In this regard, the Bench cites the case of **Proctor & Gamble Pakistan (Pvt.) Limited 2010 CLD 1685 (Proctor & Gamble Case)**. The Commission in the aforesaid case vide Order dated 23.02.2010 observed as follows:

*"... the advertiser must have some recognizable substantiation for the claims made prior to making an advertisement. This doctrine is borrowed from the U.S. jurisprudence on the subject (Pfizer Inc., 81 F.T.C 23 (1972). The advertiser must process the level of substantiation claimed, which constitutes a reasonable basis."*

33. Under competition law principles, deceptive marketing is evaluated based on the net general impression of an advertisement. Even if a disclaimer exists, it must be clear, conspicuous, and prominently placed to eliminate any misleading effect. The absence of key details in the Respondent's advertisement, such as the limited quantity of vehicles available at the introductory price and the abrupt withdrawal of the offer within 24 hours, raises serious concerns regarding the accuracy and transparency of the Respondent's marketing campaign.

<sup>1</sup> Case of M/s Eden Builders (Private) Limited (File No. 191/OFT/Eden Life/CCP/2015) available at [https://appadminccp.cc.gov.pk/ccporders/335cc472-faa3-44d7-98a2-2546723a6a05\\_show\\_cause\\_notice\\_issued\\_to\\_eden\\_builders.pdf](https://appadminccp.cc.gov.pk/ccporders/335cc472-faa3-44d7-98a2-2546723a6a05_show_cause_notice_issued_to_eden_builders.pdf)

34. The basic concern under consideration is whether the Respondent failed to disclose a material information that could influence consumers' decision-making. The advertisement prominently displayed the introductory prices for both GLS/FWD and ULTIMATE/AWD models, but the accompanying disclaimer "for limited period only" was in a significantly smaller font. It also did not specify the actual duration of the offer or the number of units available at that price. The advertisement in question is reproduced herein below for reference:



35. Supposedly if the word for 'limited period only' is interpreted in English Black's Law dictionary, the Respondent's introductory offer price changed after the 24 hours amounts to misleading advertisement which attracted the customers by advertising low prices. This conduct effectively attracted customers by lower prices without providing a reasonable opportunity to avail the offer.

36. The undertakings have a fundamental duty to disclose all material information to consumers in a clear, transparent, and unambiguous manner. This duty ensures that consumers can make informed purchasing decisions based on accurate and complete information. Any omission, concealment, or misleading representation of essential details, such as pricing, terms and conditions, or the duration of an offer, may create a false impression and mislead consumers. Failure to provide such disclosures constitutes a deceptive marketing practice, violating the standards of fair competition and consumer protection.



37. In UK, Advertising Standard Authority ('ASA') has a Committee of Advertising Practice ('CAP'). CAP provides guidance on advertisement and promotional marketing. UK Code Non-Broadcast Advertising and Direct & Promotional Marketing Code (CAP Code)<sup>2</sup> has the following guidelines:

*" ... 3.1 Marketing communications must not materially mislead or be likely to do so.*

*3.3 Marketing communications must not omit material information or information required to be included by law. This includes providing such information in a way that is unclear or untimely, or in a way that the consumer is unlikely to see or hear it.*

*3.9 Marketing communications must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not mislead by contradicting the claims that they qualify.*

*3.10 Qualifications must not mislead by not being presented clearly... "*

38. CAP also provide sets out details of misleading advertisements,<sup>3</sup> which indicates that Qualifications in the advertisements must be clear and legible. Additionally, the guidance state as follows:

*" ... 5. Clarity and prominence*

*Qualifications should be clear and legible; they should be prominent enough to capture a consumer's attention in a given media or ad format.*

*Decisions on whether the clarity and prominence of qualifications are appropriate, and other factors, such as whether qualifications need be asterisked to primary claims, depends on a wide range of factors including but not limited to:*

- *their size (having regard to how consumers view ads in different circumstances, for example, on devices with different screen sizes);*
- *their positioning (vertical footnotes, for example, are less likely to be acceptable as they are more difficult to read than horizontal ones);*
- *the significance of the qualification;*
- *the content and layout of the rest of the marketing communication (qualifications that are only viewable on a website or in an email by scrolling down, for instance, may not be sufficiently prominent to qualify a primary claim appearing at the top);*
- *the nature of the medium (posters, for example, usually contain limited amounts of text); and the prominence of the primary claim. "*



<https://www.asa.org.uk/static/2a4eebb9-63f2-49a8-920925d6453f0fc4/81862fb6-d2d8-4275-b0e83f27d3bc0e45/The-CAP-Code-Misleading-advertising.pdf>

<sup>3</sup> Misleading advertising: use of qualifications - Advertising Guidance (non-broadcast) available at <https://www.asa.org.uk/static/5ef9f4e1-3949-4978-af9b08c0c2d21eeb/CAP-qualifications-guidance.pdf>

39. Moreover, valuable guidance is provided by the **UK's Advertising Standards Authority** ('ASA'), the independent regulator of advertising across all media in the United Kingdom. The ASA in the case of the **Renault UK Ltd (Ref No. A23-1201059)**<sup>4</sup> held that advertisements must not mislead by hiding material details or presenting them in an unclear or ambiguous manner, and that advertisers must possess substantiation for any objective claims made in the advertisements. Additionally, the advertisement in the aforesaid case was found to be misleading due to the omission of material information and ambiguity in claims.

40. Further guidance is drawn from another decision by the ASA in the case of **Hyundai Motor UK Ltd (Ref No. A23-1201059)**<sup>5</sup> whereby the ASA found the claims of respondent misleading, as they omitted material qualifications about the specific conditions under which the advertised charging times were achievable. It was held that while standardized testing supported the 18-minute charging time using a 350 kW charger, real-world variables, such as battery age, temperature, and charger availability, substantially affected outcomes. Moreover, the failure to inform consumers about the extremely limited availability of 350 kW chargers across the UK further compounded the potential for consumer deception. Similarly, in the present case, the advertisement issued by the Respondent made time-sensitive promotional claims without disclosing significant limitations. The lack of qualifying information rendered the advertisement of the Respondent deceptive and misleading.

41. In view of the above, the Bench is of the considered opinion that the Respondent's disclaimer mentioned in the advertisement was neither conspicuous nor clearly spelled out for consumers to fully appreciate the offer. The disclosure regarding the limited availability of introductory price vehicles was completely omitted, depriving consumers of material information necessary for making an informed purchasing decision. Moreover, the advertised price was changed and increased by the Respondent within first 24 hours from the publication of the advertisement.

<sup>4</sup> <https://www.asa.org.uk/rulings/renault-uk-ltd-a23-1201059-renault-uk-ltd.html>

<sup>5</sup> <https://www.asa.org.uk/rulings/hyundai-motor-uk-ltd-g22-1147624-hyundai-motor-uk-ltd.html>



42. **In the Matter of Askari Bank Ltd, United Bank Ltd, My Bank Ltd & Habib Bank Ltd (2008),**

the Commission has set out disclosure parameters which reinforces the aforesaid principle, for instance, the Commission held that:

*"It is important to ensure that the material features of the product that are significant to the consumer in making his decision should be displayed clearly, prominently, and in terminology that can easily be understood by a lay person... In sum, all material features and conditions should be prominently displayed in clear and unambiguous language."*

43. The Respondent has contend through its written submissions along with the undated Respondent's management approval showing that only 300 units were allocated for the introductory price offer. However, this material fact was absent from all advertisements, promotional materials, and the launch event. The advertisement contained a disclaimer "for limited time period only" in a smaller and illegible fonts. The omission of critical detail about quantity of vehicles created a misleading impression that the offer was available for a reasonable period, rather than being restricted to a limited number of cars availability. By failing to disclose the limited number of vehicles available at the advertised price, the Respondent withheld material information necessary for consumers to make informed purchasing decisions. As a result, consumers were presented with an incomplete and distorted representation of the offer's actual terms, which may have materially influenced their decision to participate in the promotion or proceed with a booking. This non-disclosure significantly altered the net general impression of the advertisement, rendering it deceptive and in contravention of established principles governing fair competition and consumer protection.

44. In consideration of foregoing analysis, the Bench is convinced that the deliberate omission regarding availability of limited quantity of vehicles at introductory price constitutes dissemination of misleading information to consumers which is prohibited under Section 10(2)(b) of the Act.

45. The Bench now proceeds to examine the Respondent's defense regarding the visibility and placement of the disclaimer.

46. The Respondent has argued that the disclaimer regarding the introductory price was neither illegible nor inconspicuous. It also asserted that the advertisement occupied half of a full-page



newspaper, and the font size of the disclaimer was similar to that used in news articles, making it clearly visible.

47. The Bench would like to refer to its earlier decision in *Proctor & Gamble Case* which provides essential guidance on the effectiveness of a disclaimer as follows:

*"In relation to the effectiveness of the disclaimer/disclosure, the Commission considers factors such as 'prominence, presentation, placement, and proximity' between the claim and the associated disclaimer. The Commission observed that the same must be 'clear and conspicuous and placed as close as possible' with the advertising claim."*

48. In view of the above decision, the Bench notes that mere visibility of a disclaimer does not necessarily preclude an advertisement from being misleading. The placement, prominence, and clarity of disclaimers must be evaluated in the context of the overall impression created by the advertisement. Omission of key information by the Respondent, coupled with the disclaimer's small font size and lack of clear visibility on digital platforms failed to ensure that consumers were adequately informed.
49. As noted above, the disclaimer stating that the offer was "for a limited time period only" implied that the promotion would remain valid for a reasonable duration. In reality, however, the offer was withdrawn within 24 hours, and prices were subsequently increased.
50. The aforementioned conduct is consistent with the elements of bait advertising, wherein consumers are enticed with an appealing offer which is either revoked promptly or is subject to undisclosed limitations. Such practices undermine consumer trust and distort fair competition by creating a false sense of urgency. Consequently, consumers are placed under undue pressure to make hasty purchasing decisions without access to complete and transparent information.

51. The Bench finds it relevant to refer to the guidance provided by the Australian Competition and Consumer Commission (ACCC), which defines bait advertising in its motor vehicle industry pricing manual as follows:



*"The ACL prohibits you from advertising motor vehicles at a specified (often discounted) price if you are aware or should reasonably have been aware that you would not be able to supply that vehicle at that price—in reasonable quantities and for a reasonable period. Bait advertising occurs when motor vehicles are advertised at an attractive 'bait' price, but when the consumer goes to buy the vehicle it is not available and the dealer seeks to switch the consumer to a higher priced or differently optioned alternative. Consumers must be given a reasonable chance of actually buying the goods on special offer<sup>6</sup>."*

52. The ACCC's 'Advertising and Selling' guide also provides that:

*"Bait advertising is illegal if goods or services are advertised at a discounted price but **are not available in reasonable quantities or for a reasonable period at that price**. If the advertised goods are in limited supply or the offer is for a limited time, this must be clearly stated." [Emphasis added]*

53. The Bench concurs with the findings of the Enquiry Committee that the Respondent abruptly withdrew the introductory price offer within 24 hours of its launch, following which the prices of both models were increased by PKR 200,000. The manner in which the advertisement was presented conveyed the impression that consumers would have a reasonable opportunity to avail themselves of the introductory price. However, the sudden and unannounced revocation of the offer effectively deprived consumers of the ability to make an informed purchasing decision based on accurate and complete information.

54. The abrupt withdrawal of the promotional offer, without prior indication of its exceptionally brief duration, constitutes a misleading marketing practice. Consumers, relying on the advertisement, were entitled to reasonably expect that the offer would remain available for a reasonable period to allow them to evaluate their options before making a financial commitment. However, the unexpected withdrawal of the offer resulted in consumer deception, as those intending to benefit from the promotional price were denied a fair opportunity to do so.



55. The Bench concludes that the conduct of the Respondent aligns with the bait advertisement, where an attractive offer is advertised to generate consumer interest but is promptly retracted,

<https://www.accc.gov.au/system/files/Pricing%20Manual%20for%20the%20motor%20vehicle%20industry.pdf>

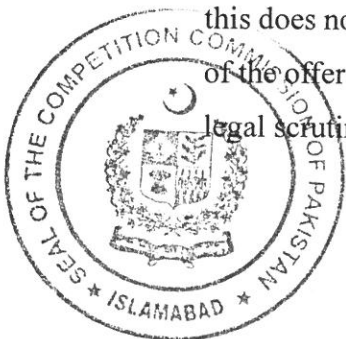
thereafter denying consumers access to the promised benefit. Such practices undermine market transparency which is against the established competition law principles.

56. The Respondent argued that its marketing strategy was in line with common industry practices, asserting that similar introductory price promotions are employed by other automobile brands. However, the Bench is of the considered view that the widespread nature of a deceptive practice within an industry does not absolve an undertaking of its legal obligations. The Commission has consistently maintained that deceptive marketing practices remain unlawful, irrespective of their prevalence or perceived acceptance in the market. *In the Matter of Paint Manufacturers 2012 CLD 808*, the Commission observed that:

*"Industry-wide deceptive practices do not absolve an undertaking of its individual responsibility under the law. Transparency in advertising is a fundamental requirement regardless of common industry norms."*

57. In consideration of the preceding discussion, the Bench finds that the Respondent's reliance on common industry practices does not constitute a valid defense. Regardless of whether other market players engage in similar conduct, each undertaking is required to adhere to fair marketing principles. The lack of transparency in the Respondent's introductory price campaign, combined with its failure to disclose key details, resulted in consumer deception. Therefore, the Bench holds that the Respondent is liable for engaging in deceptive marketing practices, thereby violating Section 10(2)(b) of the Act.

58. The Bench finds Respondent's contention unconvincing that consumers in Pakistan are well-informed and familiar with fluctuations in automobile pricing. Under competition law, it is not necessary to establish that consumers were in fact deceived; it is sufficient to demonstrate that the advertisement in question was misleading. The law imposes a duty on undertakings to ensure that their advertisements are transparent, accurate, and not likely to cause confusion. Even if some consumers may independently verify information prior to making a purchase, this does not absolve the Respondent of its obligation to present a clear and truthful depiction of the offer. An advertisement that creates a misleading overall impression remains subject to legal scrutiny, irrespective of the level of consumer awareness.



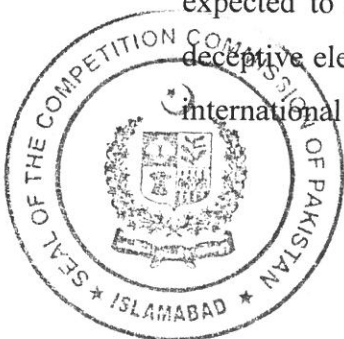
59. Moreover, the Bench is of the opinion that even well-informed or experienced consumers are entitled to the full disclosure of all material information, especially in transactions involving considerable financial commitments. Purchasing a vehicle is a major investment for most individuals, and such decisions are heavily reliant on clear, accurate, and complete information. The failure to disclose material information—such as the limited quantity available at the promotional price—can mislead consumers and compromise their ability to make well-informed choices. The responsibility to ensure transparency lies with the undertaking, and any omission in this regard adversely affects both consumer autonomy and market fairness.

60. The Bench reiterates the principle established by this Commission in *China Mobile case* that

*“[in] evaluating advertisements, the overall net impression must be considered. A misleading impression does not become truthful simply because a disclaimer exists somewhere in the advertisement.”*

61. The Respondent's contended that no specific guidelines were available at the time of publishing the advertisement, and therefore it could not have known the parameters to follow. The Bench finds this contention untenable. It is a well-established principle of law that ignorance of law does not constitute a valid defense. The obligation to ensure that advertisements do not mislead consumers is an inherent duty of all undertakings engaged in commercial activities, irrespective of whether additional explanatory guidelines exist. Moreover, the standard for assessing deceptive marketing practices is not contingent upon the existence of sector-specific guidelines but rather on the general principles of fairness, transparency, and non-misleading representation enshrined in the Act. The absence of written guidelines does not absolve an undertaking from its legal obligation to ensure that its marketing practices are not deceptive, misleading, or in violation of Section 10 of the Act.

62. The Commission has consistently enforced the above-stated principles in its previous decisions/orders. Additionally, jurisdictions worldwide recognize that undertakings are expected to act in a responsible manner and ensure their advertisements do not contain deceptive elements. As an international entity, the Respondent is expected to adhere to best international practices when publishing advertisements. For comparison purposes, the Bench



has reviewed an advertisement (mentioned below) published by Hyundai in India, and noted that it was clear, well-structured, and contained disclaimers with legible and capacious fonts.

**The deals are only for April.  
your smile will be permanent.**

This April bring home your dream Hyundai and avail amazing benefits from Advaith Hyundai. Hurry up!!

Grand i10 Nios	i20	EXTER	VENUE
Benefit up to ₹ 68,000*	Benefit up to ₹ 65,000*	Benefit up to ₹ 50,000*	Benefit up to ₹ 70,000*

\*Includes Exchange / scrappage benefit up to ₹ 45,000\*

Limited Offer Valid till 30. April 2025

63. In light of the above, the Bench is of a considered view that the Respondent is expected to be aware of principles of fair advertisement requiring that material terms to be disclosed in a clear and unambiguous manner, irrespective of specific regulatory guidelines. Section 10 of the Act is very clear in this regard which prohibits deceptive marketing practices. The Respondent's attempt to justify its misleading advertisement on the basis of the absence of formal guidelines is therefore without merit. The fundamental obligation under the law remains unchanged: undertakings must ensure that their advertisements do not mislead consumers, irrespective of the existence of detailed guidelines.

64. The Respondent, during the hearing before the Bench, further submitted that they were not expecting that 300 vehicles would be sold out within 24 hours from the publication of the advertisement. The Respondent also informed the Commission that all consumers who made bookings had agreed to and signed terms which mentioned that, in case of cancellation, a deduction would be applied. However, as a gesture of goodwill, the Respondent voluntarily offered a full refund to two consumers who cancelled their bookings after the price increase. The Respondent, however, provided no evidence in support of the above.

65. In view of the above, the Respondent contended that since the Commission adopted a compliance-oriented approach in similar cases in the recent past and has not imposed fines on undertakings, hence, in the case of Respondent, similar approach may be taken by the Commission.



66. The Bench is of the view that afore-mentioned contention of the Respondent does not hold merit as each case is assessed on its own facts and circumstances, taking into account the nature, gravity, and impact of the violation. A prior case where a compliance-oriented approach was taken does not create a precedent for leniency in all future cases, especially where the contravention is more serious or has led to greater consumer deception. Accordingly, the Commission exercises its discretion in determining appropriate enforcement actions on a case-by-case basis, ensuring that the outcome aligns with the objectives of the Act, including deterring deceptive marketing practices and safeguarding consumer interests.
67. Having considered the above analysis, the Bench is of the firm view that the Respondent's introductory price campaign was misleading, as it failed to provide sufficient clarity regarding the actual conditions of the offer. The absence of clear disclosures and the sudden price increase created confusion among consumers, thereby violating the section 10(2)(b) of the Act.
68. In the view of the foregoing, the Bench holds that the Respondent made an introductory price offer to the consumers through the advertisement, however, the disclaimer provided to the consumer did not provide enough information. The Respondent used "bait advertisement" to lure the consumers towards buying its product, and then immediately changed the price which did not give the consumers a reasonable chance of actually buying the product at the introductory price. The advertisement, therefore, is misleading and the Respondent acted in violation of Section 10(2)(b) of the Act.

**(II) Whether the false and misleading information distributed by the Respondent was capable of harming the business interests of any other undertaking(s) in terms of Section 10(2)(a) of the Act.**

69. The Bench has carefully examined the findings of the Enquiry Committee in relation to the alleged violation of Section 10(2)(a) of the Act, which prohibits the dissemination of false or misleading information that is capable of harming the business interests of another undertaking. The Enquiry Report does not establish a nexus between the Respondent's



misleading advertisement and its capability of harming business interest of other competing undertakings. The Enquiry Committee's assessment in this regard appears largely presumptive, therefore, the Bench is of the considered view that a violation of Section 10(2)(a) of the Act has not been sufficiently established in this case.

## DECISION AND PENALTY

70. The Bench, while determining the quantum of penalty, has duly considered Guidelines on Imposition of Financial Penalties. These Guidelines state that policy objective of any fine is to create deterrence as well as to reflect seriousness of the infringement. The Bench considered the seriousness of the infringement, particularly the nature of the deceptive marketing practice involving bait advertising and the deliberate omission of material information from the Respondent's advertisement. Such omission of material information influenced the consumer decision-making and created imbalance business environment in automobile sector. While the duration of the infringement was brief, its timing, magnitude, and impact were significant, as the advertisement was disseminated widely through digital and print media at the time of the product launch.
71. The Bench also took into account the market position and financial strength of the Respondent, which operates as a joint venture backed by globally recognized automotive brands, and has access to substantial resources. The Bench also took into account the international marketing practices of the Respondent, especially Hyundai (India) as mentioned at para 61 above. On the other hand, the refund of booking amount to consumers without any deduction by the Respondent and the absence of prior violations were also considered as mitigating factors while determining the quantum of penalty.
72. The Bench, having carefully considered the finding of the Enquiry Report, the briefs and materials submitted by the Respondent, the entire mosaic of marketing as well as entire legislative mandate envisaged under section 10 of the Act, finds that the Respondent has acted in contravention of the Section 10(2)(b) of the Act by omitting to disclose material information related to their products characteristics to the consumers. Therefore, the Bench



hereby imposes a penalty in the sum of PKR 25,000,000/- (Twenty Five Million Rupees only) on the Respondent undertaking.

73. The Respondent is directed to deposit the penalty amount within thirty (30) days from date of this Order. Failure to comply shall render the Respondent liable to a further penalty of PKR 10,000/- (Ten Thousand Rupees only) per day from date of issuance of this Order and initiation of criminal proceedings against the Respondent pursuant to Section 38 of the Act before the Court of competent jurisdiction.

74. In terms of the above, SCN No. 02/2021 is hereby disposed of.

75. It is so ordered.



Dr. Kabir Ahmed Sidhu  
*Chairman*



Bushra Naz Malik  
*Member*



ISLAMABAD, THE 15<sup>th</sup> DAY OF APRIL 2025.