



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO
M/s AL-GHAZI TRACTORS LIMITED
REGARDING DECEPTIVE MARKETING PRACTICES**

(File No. 423/OFT/AL-GHAZI/CCP/2022/147)

Date(s) of Hearing:

09/01/2025

Commission:

Dr. Kabir Ahmed
Chairman/Member

Mr. Salman Amin
Member

Present on Behalf of:

**M/s Al-Ghazi Tractors
Limited**

Mr. Waqas Mir
Advocate Supreme Court



ORDER

1. This order shall dispose of the proceedings initiated under Section 30 of the Competition Act, 2010 (the “Act”), arising out of Show Cause Notice No.01/2024 dated 09/01/2024 (the “SCN”) issued to **M/s Al-Ghazi Tractors Limited** (the “Undertaking” or “Respondent”), for *prima facie* violation of Section 10 of the Act.

I. BACKGROUND

2. The Undertaking is a registered company in Pakistan under the Companies Act, 2017 (previously the Companies Ordinance, 1984). It is also listed on Pakistan Stock Exchange. It is principally engaged in the manufacturing and marketing of tractors within the country. The Respondent clearly falls within the definition of an undertaking as stipulated under Section 2(1)(q) of the Act.
3. The Respondent published an advertisement on the front page of a leading national newspaper, namely Daily Jang, on 24/01/2022, (the “Advertisement”). The Advertisement disclosed that the Respondent had launched its new Holland Tractors models 2022 (the “Products”) in Pakistan. The key features of the said products were prominently highlighted in the Advertisement. A copy of the Advertisement, which is also available online at the website of the newspaper¹, is placed below:



¹ The Daily Jang, Lahore' (Jang, 24 January 2022) <<https://e.jang.com.pk/laure/24-01-2022/page1>> accessed 30 January 2025

4. The Advertisement claimed that the Products were “with 30% extra diesel savings compared to any competitor’s tractors” (hereinafter referred to as the “**Deceptive Claim**”). An asterisk (*) at the end of the Deceptive Claim in the Advertisement indicated that the claim was based on a report issued by the Agriculture Mechanization and Research Institute Multan, Government of the Punjab (hereinafter referred to as the “**AMRI**”).

II. PRELIMINARY PROB PRIOR TO SHOW CAUSE NOTICE

5. The Advertisement appeared to be a high-sounding, unfounded claim, unsubstantiated by any corroborative evidence. Consequently, the Commission's Office of Fair Trade (hereinafter referred to as the “**OFT**”) investigated the matter further. The OFT comprehensively analyzed the basis of the claim made by the Undertaking in the Advertisement and its impact on the consumers and competition. Additionally, the OFT considered informal complaints submitted to the Commission through emails by few stakeholders also regarding the unfounded claims in the referred Advertisement made by the respondent.
6. To confirm the veracity of the Deceptive Claim, the OFT contacted the AMRI via email on 07/02/2022 and requested it to share any test or research report it had conducted to substantiate the Undertaking's claim in the advertisement. In response thereto, AMRI replied vide email dated 08/02/2022, stating that it had not issued any document or certificate to the Undertaking indicating that the Products are 30% fuel efficient compared to tractors of other manufactures. The Director of AMRI further clarified that the institute had already directed the Undertaking, through a notice dated 25/01/2022, to refrain from such activities in the future and shared with the Commission a copy of the said notice served upon the Undertaking.
7. After carefully reviewing the Deceptive Claim, the AMRI report, and the response of AMRI shared with the Commission, the OFT prepared a working paper and placed the matter before the Commission. The Commission considered the matter and vide resolution dated 27/11/2023 decided to issue a Show Cause Notice under Section 30 to the Undertaking for violation of section 10 of the Act.



III. SHOW CAUSE NOTICE

8. Accordingly, a SCN dated 09/01/2024 was issued to the Undertaking. The relevant paragraphs of the SCN are reproduced hereunder:

WHEREAS, M/S. Al-Ghazi Tractors Limited, a public limited company, registered in Pakistan under the Companies Ordinance 1984, engaged in the manufacture and marketing of tractors, is an 'Undertaking' as defined under clause (q) of sub-Section (1) of Section 2 of the Competition Act, 2010 (the 'Act');

2. WHEREAS, the Undertaking, via national newspaper 'Daily Jang' dated January 24, 2022 introduced its new Holland Tractors Models 2022 (the 'Product') in Pakistan and the advertisement was published on the front/main page of the newspaper for maximum viewership (Annex-A); and

3. WHEREAS, it also came to the notice of the Competition Commission of Pakistan (the 'Commission') that the Undertaking made a high sounded claim i.e. "with 30% extra diesel saving as compared to other tractors" with a disclaimer "according to the report of Agriculture Mechanization and Research Institute (the 'AMRI') Multan, Government of the Punjab"; and

4. WHEREAS the Commission also received concerns via email regarding the said advertisement and a copy of notice served to the Undertaking by the AMRI restraining to use its name for publicity (Annex-B); and

5. WHEREAS, as per information received from the AMRI, they have not issued any document or certificate to the Undertaking, which shows that the Products are 30% fuel efficient as compare to other tractors; and

7. WHEREAS, it has been observed that the Undertaking has made claim regarding the efficiency of the products, i.e. 30% extra diesel saving as compared to other tractors which appear to be unsubstantiated and thus prima facie constitutes the distribution of false and misleading information to consumers, including the distribution of information lacking a reasonable basis related to properties, characteristics and quality of goods within the meaning and scope of Section 10(2)(b) of the Act, is violation of Section 10(1) of the Act.

8. WHEREAS, the Undertaking has issued an advertisement which appear to contain an unsubstantiated comparison of the Products with 'other tractors' and thus prima facie constitutes a false and misleading comparison of goods in the process of advertising, within the meaning and scope of Section 10(2)(c) of the Act, in violation of Section 10(1) of the Act; and

9. WHEREAS, 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 Undertakings 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;



9. In the SCN, Undertaking was required to appear before the Commission, present facts and material in support of its contentions, and avail the opportunity of being heard. The Undertaking was given fourteen (14) days' time to explain why an appropriate order under Section 31 of the Act should not be passed and/or a penalty for the violation should not be imposed under Section 38 of the Act.
10. In response to the SCN, the counsel for the Undertaking, filed an application on 23/01/2024 requesting an extension of time to file a reply to the SCN. The request was accepted by the Commission, and accordingly, vide letter dated 30/01/2024, the Undertaking was granted additional time to file the reply, with a final deadline of 13/02/2024. Finally, the Undertaking submitted its response to the SCN on 12/02/2024.
11. Subsequently, a hearing notice dated 27.12.2024 was issued to the Undertaking. The hearing was fixed on 09.01.2025, however, the counsel for the Undertaking, Mr. Waqas Mir, requested an adjournment and upon his request, the hearing was adjourned. The hearing was later fixed for 20.02.2025, which was adjourned again due to non-availability of the counsel. The hearing was took place on 06.03.2025, and the counsel presented his arguments.
12. Given the above, the Undertaking was provided with ample opportunity to respond to the SCN, present its case to the Commission, and clarify its stance explaining as to the alleged violation of the Act.

SUBMISSIONS OF THE UNDERTAKING

13. Through its response to the SCN as well as during the hearings, the counsel for the Undertaking made the following submissions before the Bench:

- i. The enquiry was not conducted in this case, which is unjustified, procedurally flawed and against the established departmental practice;



- ii. the Show Cause Notice (SCN) fails to disclose the specific reasons for its issuance, thereby calling into question the credibility and validity of the SCN;
- iii. the allegations in the SCN are based on an Advertisement published two years ago, in 2022, while the SCN was issued in 2024—resulting in an unjustified delay of two years;
- iv. the Commission has both misinterpreted and misread the Advertisement. Furthermore, the Commission failed to accurately translate the Urdu Advertisement into English. The Commission neglected to consider the “up to” 30% claim of the undertaking, which constitutes a significant oversight and illegality;
- v. the Undertaking never implied certification by the AMRI. The Advertisement does not assert certification or notification by the AMRI, a point misinterpreted by the Commission. Instead, the Undertaking bases its claim on the information provided in the report. Therefore, this misinterpretation forms the basis of the SCN, which should be withdrawn.

IV. ISSUES FRAMED

14. Arguments heard, record perused. Based on the divergent allegations in the SCN, the reply, pleadings and arguments of the Undertaking during the hearing, the following issues are considered relevant for decision of this matter:

- A. Whether the Commission has committed procedural irregularity and illegality by issuing the SCN without conducting an enquiry under Section 37 of the Act?
- B. Whether the Undertaking has engaged in Deceptive Marketing Practices and violated Section 10(2)(b) of the Act by distributing false or misleading information to consumers lacking a reasonable basis, related to the character of its products?
- C. Whether the Undertaking has engaged in Deceptive Marketing Practices and violated Section 10(2)(c) of the Act by false or misleading comparison of goods in the process of advertising?



V. **ANALYSIS**

ISSUE A: Whether the Commission has committed procedural irregularity and illegality by issuing the SCN without conducting an enquiry under Section 37 of the Act?

15. The learned counsel for the Respondent submits that the Commission failed to conduct an enquiry prior to issuing the SCN, and has thereby committed procedural illegality and irregularity. To examine this objection, we will first review the relevant legal provisions.
16. According to section 30(1) of the Act, if the Commission is satisfied that a contravention of any provision of Chapter II has occurred or is likely to occur, it may issue the orders specified under section 31. It may also impose a penalty as envisaged under section 38. However, sub-section (2)(a) of section 30 of the Act requires that the Commission shall issue a show cause notice to the concerned undertaking before passing an order, formally notifying the undertaking to this effect. Thereafter, the Commission is required under sub-section (2)(b) of section 30 of the Act to give the undertaking an opportunity of hearing and to defend its position.
17. The Commission is empowered to conduct enquiries and studies under section 37 (1) of the Act. Under this section, the Commission may on its own or shall upon a reference made to it made to it by the Federal Government, conduct enquiry into any matter relevant to the purposes of the Act. Under section 37(2), in case where the Commission receives a complaint from an undertaking, then it shall conduct enquiry into the matter.
18. It is pertinent to note that the power and authority conferred upon the Commission under section 30 is distinct and independent of section 37 of the Act. Thus, the Commission's power to invoke section 30 is not contingent upon invoking the power conferred under section 37 of the Act and the said sections are to be read separately and independently of each other with the obvious intent of law.



19. Furthermore, regulation 22 of the Competition Commission (General Enforcement) Regulations, 2007 (hereinafter referred to as the **Regulations**) expand upon the Act outlining the rules and procedures under which the Commission may initiate and conduct inquiries. The said regulation reads as under:

22. Initiation of proceedings under section 30.-

(1) *Where the Commission on its own or upon filing of the complaint is satisfied, that there has been or is likely to be, a contravention of any provision of the Ordinance, the Commission may issue a show cause notice stating the reasons thereof to such person as may appear to it to have been or likely to be in contravention.*

(2) *If the information available on the record is sufficient to satisfy the Commission that the contravention of any provision of Chapter II has been committed or is likely to be committed the Commission may proceed under sub-regulation (1) above without conducting inquiry under these regulations.*

20. The legal principles established by the honorable Supreme Court of Pakistan in its reported judgment **Competition Commission of Pakistan Vs Dalda Foods Limited** 2023 SCMR 1991 upheld this power of the Commission as under:

Para 11 ".....Additionally, Regulation 22 provides in respect of initiation of proceedings under section 30 and states where the CCP, on its own motion or on a complaint, is satisfied that there is a contravention of the Act, it may issue a show cause notice stating its reasons and if the information available is sufficient to satisfy the CCP that the contravention of any provision of Chapter II is committed, it may proceed without conducting enquiry under the Regulations. In other words, the enquiry under section 37 serves as a preliminary step to gather information and evidence, and if it reveals a potential contravention of Chapter II of the Act, the CCP can then proceed. However, such enquiry is not always necessary to proceed against an undertaking, and if the CCP is satisfied on the information that it has available that a contravention of Chapter II of the Act is committed, it may proceed without it."



In the light of the above discussion, it is evident that section 30 is independent and not contingent on section 37 of the Act. Accordingly, enquiry is not a necessary prerequisite to the issuance of show cause notice and initiation of proceedings under section 30 of the Act. Section 37 of the Act cannot be construed in any way to

restrict the scope and very purpose of the Act or to pose constraints on the powers of the Commission by creating procedural hurdles. Therefore, the Commission is not always required to conduct an enquiry when sufficient evidence is already available, it can directly issue a show cause notice to an undertaking. The AMRI's email dated 08.02.22 to the Commission and its earlier letter dated 25.01.22 to the Respondent, *inter-alia* provide substantial and credible evidence sufficient for the Commission to proceed with the issuance of the SCN.

22. Here it is also important to recognize that the Respondent has been given an adequate opportunity to respond and to defend its position in writing as well as during the hearing. Therefore, there is no force in its argument of any procedural irregularity by the Commission. In this respect the recent judgment of the Honourable Lahore High Court, Lahore, reported as *M/s Sadiq Poultry (Private) Limited v/s Federation of Pakistan and others* PLD 2025 Lahore 57, is also instructive where the honorable Justice Jawad Hassan observed that an inquiry by the Commission does not constitute a formal proceeding and does not entail penal consequences. The issuance of a Show Cause Notice marks the initiation of formal proceedings, wherein the undertaking must be afforded a complete opportunity for a hearing and due process of law must be strictly observed. The relevant portion of the judgment is reproduced below:

9.....*However, it is crucial to note that the initiation of an enquiry under Section 37 does not equate to a formal proceeding under Section 30 of the "Act", as the latter involves potential penal consequences. Section 37 of the "Act" is particularly pertinent to the CCP's authority to conduct enquiries. Sub-section (1) empowers the CCP to initiate enquiries on its own or upon a reference from the Federal Government.*

10.*The Court feel it imperative to discern that if this extraordinary jurisdiction can be determinatively applied to the situation in hand where the 'injury' is not actual rather perceived in the form of mere issuance of show cause notice.....*

12. *A show cause notice is therefore not a testament of an adverse proceeding against a party rather it is an intimation of initiation of a process, which requires certain answers and*



clarifications from the party being addressed to. As such a show cause notice is not and ought not to be a culmination of unfavorable determination against the party but it is, and it must be adopted as a mode of opportunity to enable the party to provide explanation of certain facts or missing information as required by the relevant law in a case where shortcomings or omissions thereof surfaced or noted either through the enquiry, tentative or otherwise or by information received to the department in any other manner.

23. Finally, the learned counsel raised an objection, arguing that the Commission has deviated from its established departmental practice and has not provided the procedural protections afforded to other parties. However, this claim is unfounded. The Commission has dispensed with enquiry proceedings in multiple cases, when it determined that there is sufficient and substantial evidence on record to satisfy itself that a contravention of the Act has occurred. As such, the assertion that the Commission has deviated from its departmental practice thus in itself lacks merit and legal grounds rather it tends to undermine the substantial evidence which was before the Commission to proceed with.
24. In this regard, reference can be made to multiple cases of the Commission. *In the matter of Show Cause Notice issued to Institute of Chartered Accountants of Pakistan (ICAP)* Order dated 10/01/2013, *In the matter of Show Cause Notice Issued to Pakistan Poultry Association (PPA)* Order dated 29/02/2016 the Commission dispensed with the enquiries by directly issuing a show cause notices to the undertakings.
25. Similarly, the Commission dispensed with enquiry *In the matter of Show Cause Notice issued to All Pakistan Cement Manufacturers Association and its Member Undertakings 2010 CLD 1586* and held as follows:



".....It is our considered view that power to initiate proceedings under section 30 is not dependent upon conducting an enquiry."

".....As stated previously, sections 30 and 37 are entirely independent provisions. While conducting an enquiry under section 37, section 37(4) requires that apart from

establishing a prima facie case, the Commission must form an opinion based on the findings of an enquiry that it is in public interest to initiate proceedings under section 30. However, the reverse of this is not true; proceedings under section 30 are not subject to any such limitation."

".....Accordingly, the Commission was under no requirement to first conduct enquiry under section 37 and to show that it was in the interest of public to begin proceedings before initiating the same under section 30."

26. For the foregoing reasons, we find the ISSUE A in negative as in issuing the SCN to the undertaking, based on the corroborative evidences and without the need to conduct an enquiry, the Commission has not committed any procedural irregularity or illegality.

ISSUE B: Whether the undertaking has engaged in Deceptive Marketing Practices and violated Section 10(2)(b) of the Act by distributing false or misleading information to consumers lacking a reasonable basis, related to the character of its products?

The Deceptive Claim

27. At the outset, it is important to discuss the claim of the Respondent in the Advertisement. The Advertisement makes a specific assertion regarding the Products of the Undertaking. The claim is reproduced below as published in Urdu;

پاکستان میں کسی بھی درمقابل ٹریکٹر سے 30 فیصد تک ڈیزل کی اضافی بچت کیساتھ

28. The claim, on the surface, suggests that the Products (2022 Model Tractors) of the Respondent are fuel-efficient and specifically asserts that they offer up to 30% additional fuel savings. Furthermore, the claim draws a comparison to the Products of other competitors in Pakistan. This is a specific and quantifiable assertion that must be substantiated by the Undertaking with evidence, research, documentation, or certification to support such a claim.

The AMRI Report



29. It is essential to review the Advertisement in its entirety, including the disclaimer provided by the Undertaking. The asterisk (*) at the end of the Deceptive Claim indicates that the Undertaking relies on the report of the AMRI.
30. However, when confronted with this issue i.e. non-availability of certification or documentation for the Deceptive Claim, the Undertaking, in its response to the SCN, stated that it does not possess any certification or approval from AMRI and did not make any such claim that it possesses any certification. The Respondent further stated that it relied only on the information provided in the report of AMRI.
31. It is important to consider that AMRI vide its letter dated 25.01.22 to the Respondent, not only communicated it to restrict from use of its name for publicity purposes but also asked respondent to immediately withdraw its referred advertisement through the same newspaper. From the closer examination and scrutiny of the AMRI Report, it also transpires that the AMRI report does not contain any specific information, which may support the claim of the Respondent. Paragraphs 4.2 to 4.5 of the said report address the fuel consumption of the Undertaking's tractors as well as those of other manufacturer's tractors, which were part of the AMRI study. The report compares the tractors of the Undertaking with the tractors of its competitor, in various scenarios when different implements are installed on the tractor, such as disc harrows, chisel ploughs, cultivators, and rotavators. In this context, the report concludes that one model of the Undertaking's tractors was fuel-efficient in a particular scenario, but only in comparison to a few other models of tractors included in the study.
32. It is pertinent to mention here that contrary to the claims of the Respondent, the AMRI report whilst discussing the fuel efficiency, has in Para 5, provided a comprehensive list of 16 tips on energy conservation. Mere abstracting a part of the referred report without the complete context of the study carried out and the recommendations made therein, is likely to mislead the consumers on the claim made by the Respondent about fuel efficiency in the advertisement.



Here it is also important to consider that the Para 2.1 of the referred report of AMRI has clearly mentioned that it has used the tractors of only two

manufacturers which includes the tractor models of the Respondent and of another commonly used tractor manufacturer in Pakistan. However, the claim in the advertisement goes beyond this limited comparison by claiming the fuel efficiency with any competitor tractor in Pakistan based on the same report.

34. The above discussion clearly shows that the AMRI report does not support the purported claim of the Respondent as Respondent has used the contents of said report in a deceptive manner. Therefore, the claim of the Respondent is without any reasonable basis.
35. In its correspondence with the Commission, AMRI denied granting certification or approval to the Respondent Undertaking and categorically denied issuing any report, finding, or information that could support the claims made by the Respondent. Moreover, the AMRI explicitly prohibited the Respondent from using AMRI's name for the publicity of its products, which is a substantial evidence of AMRI's views on the Respondent's actions and claims, which can mislead the consumers.

Violation of Section 10(2)(b) of the Act

36. Now we will examine whether this Deceptive Claim amounts to distribution of "false" and "misleading" information to consumers, particularly, the dissemination of information lacking a reasonable basis regarding the character and properties of the product. The statutory language of Section 10(2)(b) is reproduced below:

10. Deceptive marketing practices.---

...

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of an Undertaking resorts to

- (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;*



37. In the first step, we will determine the “misleading” aspect of the Deceptive Claim of the Respondent and then move on to examination of the “falsehood” of the claim.

Misleading Nature of the Deceptive Claim

38. For this purpose, the Commission is guided by the principles laid down in its earlier order **In the matter of Messrs. China Mobile Pak Limited and Messrs. Pakistan Telecom Mobile Limited 2010 CLD 1478** (the *China Mobile case*). In that case, the Commission laid down the parameters of false and misleading information, which is reproduced below:

“...Whereas **'Misleading information'** may essentially include oral or written statements or representations that are;

- (a) capable of giving wrong impression or idea,
- (b) likely to lead into error of conduct, thought, or judgment,
- (c) tends to misinform or misguide owing to vagueness or any omission,
- (d) may or may not be deliberate or conscious and
- (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”

39. When we apply the above test to the facts of this case, it is evident that the representation made by the Undertaking in its Advertisement certainly creates a misleading impression to the consumers about the fuel efficiency of the product. Such impression created, particularly by wrongly referring to AMRI report, is likely to induce decisions of the consumers on claim which is not backed on substantial evidence in support thereof.. Further, the representation made in the claim that it is 30% more fuel efficient carries erroneous connotation and thus misleading for the consumers.

As mentioned earlier, the referred report by AMRI has compared the products of Respondent with that of one competitor only. Thus, the claim of the Respondent



is inherently deceptive and misleading and prohibited under Section 10. The Deceptive Claim was carefully crafted with the intention of deceiving the ordinary customers into believing that the Undertaking's products were superior in terms of fuel efficiency and would result in additional savings for the users. In this way, the Respondent tried to create a deceptive impression of the product's performance, enticing the consumers by promising significant economic benefits that may not actually exist.

41. It is an admitted fact that the claim is not a subjective opinion or mere puffery, which may be ignored as exaggerated marketing rhetoric. Instead, the deceptive claim of the Undertaking is an objective statement that presents itself as a verifiable fact. The specific and measurable nature of the claim, which asserts that the 2022 Model Tractors provide up to 30% additional fuel savings compared to the other competitors, underscores its misleading character. With respect to whether a claim is puffery or not, the Commission held in its earlier order *In the matter of Complaint filed by Reckitt Benckiser Pakistan Ltd. against M/s S.C. Johnson and Son Pakistan Limited for Deceptive Marketing Practices 2012 CLD 783* as under:

"18.we are of the considered view that generally 'puffery' is intended to base on an expression of opinion not made as a representation of fact. 'Puffing' statements are, while factually inaccurate; so grossly exaggerated that no ordinary consumer would rely on them. Hence 'puffing' is generally vague and unquantifiable."

42. Given that the Undertaking's claim represents an unambiguous and quantifiable fact, it cannot be ignored as mere puffery. This representation by the Undertaking has the potential to create a false impression or idea, with the clear intention to misinform and mislead customers, potentially leading them to induce their decision and in buying the Products on a claim that is not substantiated. Hence, this Deceptive Claim constitutes a false and misleading representation.

False Nature of the Deceptive Claim

Now we will turn our attention to the false nature of the Deceptive Claim. In the *China Mobile case*, the following criteria for false information was established:



'False information' can be said to include: oral or written statements or representations that are;

(a) contrary to truth or fact and not in accordance with the reality or actuality;

(b) usually implies either conscious wrong or culpable negligence,

(c) has a stricter and stronger connotation, and

(d) is not readily open to interpretation.

44. In this respect, it is noteworthy here that when the Deceptive Claim of the Undertaking is scrutinized in light of the AMRI report, it becomes evident that the claim is false and directly contradicts the AMRI report. As previously discussed, the report explicitly indicates that the product Ghazi-65 of the Undertaking is not as fuel-efficient as the competitor's tractor.

45. Given this finding, the Undertaking's Deceptive Claim that its tractors provide up to 30% fuel savings compared to other tractors is clearly unfounded. Such a claim not only misleads potential customers but also disseminates false information that could significantly impact consumer decisions and market dynamics. In light of this substantial evidence provided by the AMRI report, it is imperative to address and rectify the false claims made by the undertaking to ensure transparency and integrity in advertising. The dissemination of false information undermines consumer trust and distorts the competitive landscape, necessitating appropriate corrective measures.

Lack of Reasonable Basis

46. Another test which is incorporated in the Act is the 'lacking of reasonable basis'. According to Section 10 (2)(b) of the Act, the distribution of false and misleading information to consumers must lack reasonable basis. It is obvious that any information that has reasonable basis would not amount to 'false' or 'misleading' information. The test has been interpreted by this Commission on various instances, which are discussed below.

The Commission has previously also held that while advertising the businesses should be careful and should disseminate information through marketing which is backed by some reasonable basis. In the Order passed by the Commission In the



matter of Show Cause Notice issued to M/s Proctor and Gamble Pakistan (Pvt.) Limited (Head And Shoulders Shampoo) 2010 CLD 1695 (the P & G Case), the following was held;

"33. The concept of having a reasonable basis is an established concept in USA and was introduced after much deliberations and public comments through Policy Statement Regarding Advertising Substantiation. It provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement."

48. Similarly, in another case the same aspect is reiterated the relevant part of which is reproduced below for reference;

30. The Pfizer factors were later formally adopted in the FTC's 'Policy Statement Regarding Advertising Substantiation' of 1983 that required prior substantiation or reasonable basis before making an advertisement. The advertisers may violate Section 10 of the Act by making an affirmative product representation unless they have a reasonable basis in support of their representation. The rationale behind the concept is that the consumers expect the product advertisers to have a reasonable basis or substantiation of support of such representation.

49. In view of the above observations of the Commission, it is evident that the Undertaking lacks any recognizable substantiation or reasonable basis to assert such a bold claim that its products save up to 30% additional fuel. This conclusion is further reinforced by the fact that the AMRI report, on which the undertaking relies, contains no information or findings that support this claim. In view of the claim on fuel efficiency by the Respondent, it is pertinent to consider that the Para 5 of the report has clearly outlined the energy conservation tips for tractors regardless of their make and model. Therefore the absence of corroborative evidence from the AMRI report on fuel efficiency claim by the respondent, highlights the misleading nature of the undertaking's assertion, indicating that it is an unverified and unsupported claim intended to mislead consumers about the product's fuel-saving capabilities.



Ordinary Consumer Test

50. It is a well-established legal principle across various jurisdictions that the standard for evaluating consumer behavior and expectations must be based on the perspective of an “ordinary consumer”. This means that the courts often consider what an ordinary person in the general public would think or how they would act in a given situation. The Commission previously held that restricting the interpretation of the ordinary consumer with the use of the word’s ‘average’, ‘reasonable’ or ‘prudent’ will not only narrow down and put constraints in the effective implementation of the provision, it will also be contrary to the intent of law (2021 CLD 484).

51. In the *China Mobile case*, the following was held regarding the definition of the consumer:

Para 32 “Here it may be relevant to point out that the 'ordinary consumer' is not the same as the 'ordinary prudent man' concept evolved under contract law. Unlike the 'ordinary prudent man' the thrust on ordinary diligence;- Caution/duty of care and ability to mitigate (possible inquiries) on the part of the consumer would not be considered relevant factors. It must be borne in mind that one of the objectives of the Ordinance is to protect consumers from anti-competitive practices; hence, the beneficiary of the law is the consumer. Therefore, in order to implement the law in its true letter and spirit, the scope of the term 'consumer' must be construed most liberally and in its widest amplitude in my considered view, restricting its interpretation with the use of the words 'average', 'reasonable' or 'prudent' will not only narrow down and put constraints in the effective implementation of the provision it would, rather be contrary to the intent of law. It would result in shifting the onus from the Undertaking to the consumer and is likely to result in providing an easy exit for Undertakings from the application of section 10 of the Ordinance. Accordingly, the term 'consumer' under section 10 of the Ordinance is to be construed as an 'ordinary consumer' but need not necessarily be restricted to the end consumer of the goods or services.



The Commission, *In the matter of Show Cause Notice issued to Eight (8) Campuses of Dar-e-Arqam Schools 2022 CLD 1343 (the Dar-e-Arqam Schools case)* and *In the matter of Show Cause Notice issued to Unilever Pakistan*

Limited on Complaint filed by Reckitt Benckiser Pakistan Ltd 2024 CLD 1069
(the *Reckitt Benckiser case*), reiterated this viewpoint.

53. Accordingly, an ordinary consumer, when presented with the claim of the Respondent, would naturally interpret it as a factual assertion and would rely on the Deceptive Claim when making the purchasing decisions regarding tractors, assuming that the Undertaking's tractors offer substantial fuel savings over the tractors of its competitors. The specific nature of such claim and reference to AMRI study, adds to its apparent credibility, making it more likely to influence the consumer's choice.

Net General Impression Test

54. While examining a deceptive claim, the Commission usually considers the Net General Impression Test. As per the said test, the overall impression from the deceptive advertisement is considered instead of isolated statements or words.
55. In *Dar-e-Arqam Schools case*, it was held that both express and implied claims contained in the advertisement are to be considered by the Commission. In this regard the following was held:

"40. Furthermore, while evaluating the 'net general impression' or dominant message, the Commission also delineates and examines express and implied claims contained in an advertisement or promotional campaign while holding the advertiser liable for both. The advertiser is liable for all such claim if they are false and/or misleading or lack a reasonable basis for the same. Neither proof of intent to disseminate a deceptive claim, nor evidence that consumers have actually been misled is required for an act or omission to constitute violations under section 10 of the Act."

56. Similarly, in the case of *Reckitt Benckiser Pakistan Ltd.*, it was held that the complete advertisement is to be looked at while evaluating its misleading or false nature and opinion is to be made on the net general impression conveyed by the alleged advertisements.



57. In *China Mobile case*, while referring to the judgment of *Standard Oil of Calif 84 F.T.C 1401*, the Commission has adhered to the concept of advertising representation and assessment thereof 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 (3rd 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 ...'."

58. While applying the test of 'net general impression' to the facts of the case at hand, it is evident that all characteristics of that test are available in the Deceptive Claim of the Respondent. The overall impression conveyed by the Advertisement is a misleading representation, suggesting that the Undertaking's products are up to 30% more fuel-efficient in addition to the savings they purportedly already provide.
59. Therefore, the deceptive nature of the claim goes beyond mere exaggerated marketing. It has the potential to significantly impact the decision-making process of a reasonable consumer. By presenting a misleading claim, the Undertaking not only misguides the consumers but also undermines their trust.
60. It is important to note that the ability of an advertisement to influence the decision-making process of an ordinary customer does not need to be demonstrated in a real-world context. There is no legal requirement to show that the advertisement was actually able to influence the customer's decision. Instead, the likelihood and capability of the advertisement to misguide and influence the decision-making process are sufficient to establish a violation of Section 10 of the Act. The Commission has previously upheld this principle in its earlier order in the *China Mobile case*. This precedent reinforces the understanding that the potential impact of misleading advertisements is enough to constitute a breach of the law, regardless of whether the actual influence on customers can be proven.



Concluding points

61. A final point in this regard is that in the SCN, the Commission translated the contents of the Deceptive Claim as “with 30% extra diesel saving as compared to other tractors”. However, in its reply to the SCN, the learned counsel submits that the Commission has misread and misinterpreted the entire claim of the Undertaking. According to the counsel, the claim is translated as “with additional diesel savings of up to 30% over any competing tractor in Pakistan”.
62. This argument by the Undertaking is unfounded. To comprehend the essence of the dispute, it is imperative to recognize that both translations fundamentally convey the same deceptive assertion: the Undertaking's tractors purportedly offer 30% extra/additional diesel savings compared to any other competing tractor in the market. The essence of the claim is to suggest a significant efficiency advantage up to the 30% fuel efficiency level, which, upon closer examination, reveals itself to be a high-sounding but misleading assertion designed to appeal to the potential customers. The undertaking's intent, as derived from both translations, remains unaltered: to create an impression of superior fuel efficiency, ostensibly distinguishing their products from the competitors.
63. This inherent deceptiveness of the claim has been thoroughly discussed above. The differences in translation, if any, as provided by the counsel, who emphasizes them as being pivotal, are negligible in impact as essence is the ceiling level of 30% being claimed in the advertisement. These minor variations in the content of the claim do not change the fundamental nature of the claim and its potential to deceive and mislead the consumer—thus rendering it unlawful. The slight nuances in wording do not mitigate the deceitful and misleading nature of the claim, and as such, the core issue of unlawfulness remains unchanged.
64. Finally, the counsel argues that the Commission has made a legal error by omitting the 'up to' 30% claim of the Undertaking, as this was not mentioned in the SCN. Contrary to this submission of the counsel, the Commission has meticulously considered every statement made by the Undertaking in its reply to the SCN.



during hearings, and in its Advertisement. Despite this thorough examination, the 'up to' claim remains false and misleading.

65. It is crucial to understand that the 'up to' 30% discount claim of the Undertaking is a deceptive marketing tactic, on the parameters discussed above. It is being intentionally ignored by the counsel that the AMRI report which has been based and used for such claim does not substantiate such claim and percentage in isolation. Therefore, any discussion on the translation of up to 30% fuel efficiency in the SCN cannot undermine or distract from the very nature of claim which in itself is deceptive and unsubstantiated. This argument is thus baseless and intended to distract from the essence of the claim which has been designed to lure consumers with the false belief that these products are significantly more fuel-efficient than those of competitors.
66. By presenting this false and misleading information, the undertaking aims to gain an unfair advantage in the market, misguiding consumers and distorting their purchasing decisions. This practice not only undermines consumer trust but also disrupts fair competition within the industry. It is imperative for regulatory bodies to address such deceptive claims to protect consumers and ensure a fair and transparent marketplace.
67. For the foregoing reasons, we find the ISSUE B in affirmative and it is hereby held that the Respondent Undertaking is in violation of section 10(1) read with Section 10(2)(b) of the Act.

ISSUE C: Whether the Undertaking has engaged in Deceptive Marketing Practices and violated Section 10(2)(c) of the Act by false or misleading comparison of goods in the process of advertising?

68. The Bench will now examine whether the Respondent Undertaking has engaged in false and misleading comparison of goods in the advertising process. The statutory test is based on four elements for the violation of section 10(2)(c) namely; i) false or misleading, ii) comparison, iii) goods, iv) in the process of advertising, which we will consider for the scrutiny of the Undertaking's Deceptive Claim under the said section. Section 10(2)(c) is reproduced below for convenience:



"10. Deceptive marketing practices."

...

(2) *The deceptive marketing practices shall be deemed to have been resorted to or continued of an Undertaking resorts to*__

...

(c) **false or misleading comparison** of goods in the process of **advertising**;

..."

69. The preceding discussion has clearly established that the Advertisement by the Undertaking unequivocally meets the criteria for being 'false' and 'misleading' as provided under Section 10(2)(b) of the Act. The term 'false' and 'misleading' has the same meaning under Section 10(2)(c). Therefore, there is no need to further elaborate on the false and deceptive nature of the claim at this stage.
70. Nonetheless, Section 10(2)(c) of the Act stipulates false or misleading comparison of goods. It is an admitted fact that the Undertaking has drawn a comparison in the Advertisement with the competitor's tractors by explicitly mentioning 'as compared to other competitor's tractors in Pakistan.
71. Additionally, it is evident that the newspaper publication falls squarely within the realm of advertisement, as the Deceptive Claim in the public Newspaper is an advertisement. We will now focus on the false and misleading nature of this comparison.
72. It has already been established in the above paragraphs that the information disseminated by the Undertaking is false and misleading. Consequently, any comparison based on this false and misleading information is also false and misleading. Since the comparison of the Undertaking's products with the competitor's tractors is grounded in the claim that the Undertaking's tractors offer an additional 30% fuel savings, the comparison itself becomes inherently false and misleading.

The deceptive claim of the Respondent portrays its tractors as superior to the tractors of its competitors based on false claims of fuel efficiency, thereby creating a false comparison. By making such false comparisons, the undertaking aims to create an unfair advantage, which is a clear violation of Section 10 (2) (c) of the

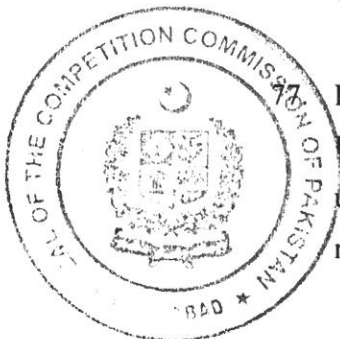


Act. Ensuring accuracy and honesty in advertising is essential to maintain consumer trust and to uphold the integrity of the marketplace.

74. The deceptive claim made by the undertaking, stating that its products save up to 30% additional fuel 'as compared to competitors,' is nothing less than a false and misleading comparison in the process of advertisement. This assertion is particularly problematic due to the lack of considerable evidence or recognizable substantiation to support the undertaking's claim. Furthermore, the burden of proof lies on the Undertaking to come up with reasonable substantiation in support of their claims made while making comparisons to the goods of competitors in the process of advertising. The Commission has also held ***In the matter of Show Cause Notice issued to M/s Catkin Engineering Sale and Services (Pvt.) Limited against KPK Directorate of Agricultural Engineering 2020 CLD 497*** that:

"11 ...The burden of proof is on the undertaking concerned i.e. manufacturer/seller of goods or provider of services that the claims made by them in the process of marketing about their products/services is appropriately substantiated."

75. In this respect, the Commission, as noted in paras above, also takes guidance from its previous order passed in the case of *P & G case*, wherein the concept of "reasonable basis" has been explained.
76. Keeping in view the above, the Undertaking in this case has no reasonable basis to suggest that its tractors are up to 30% additional or extra fuel saving as compared to the tractors of competitors in Pakistan. Further, it must have some scientific or empirical evidence or research report that would show in an objective manner that the products of the Undertaking are in fact up to 30% fuel savings when compared to competitors' tractors.



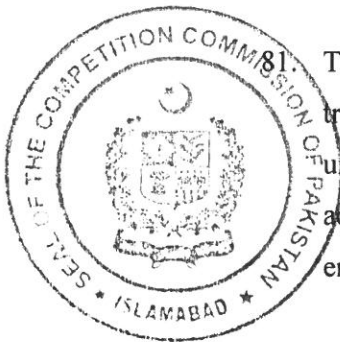
Furthermore, the AMRI's clear denial of any such findings to back up the Undertaking's assertions in the advertisement and restricting the undertaking from using its study for any claim, further underscores the falsehood in comparison and nature of the deceptive claim. Consequently, this deceptive claim not only

misleads consumers but also constitutes a false comparison, aimed at creating an unfair advantage in the market by presenting unverified and misleading information.

78. It is important to emphasize that the AMRI research and study were limited to the tractors of the Undertaking and its competitor i.e., Millat Tractors Ltd. The scope of the study did not extend to other tractors available in the market including imported tractors which are also available in Pakistan. In light of this limitation, the Undertaking's blanket claim that its tractors are more fuel-efficient compared to all other competitive tractors in the market is false and misleading comparison on its face. No other tractors were subject to the AMRI research and study, such as imported tractors, which means the Undertaking's claim lacks a reasonable basis and cannot be generalized to the entire market.

79. Even otherwise, the claim that the Undertaking's tractors provide up to 30% fuel savings is only relevant, if so, to the limited context of the AMRI study and does not extend to all competitors' tractors, which were not part of the research. This means that the claim is not only unsubstantiated but also highly misleading, as it creates a false impression of universal superiority by comparing it to 'other competitive tractors in Pakistan'.

80. The blanket claim in the process of Advertisement by the Undertaking amounts to nothing more than a false and misleading dissemination of information as well as a false and misleading comparison of products. Such claims have significant implications for consumer trust and market dynamics. False and misleading advertisements can distort consumer decisions, leading to unfair advantages for the undertaking at the expense of competitors who may have more fuel-efficient products that were not included in the AMRI study.



81. Therefore, the blanket Deceptive Claim of the undertaking falls short of being truthful and is a clear violation of Section 10 (2)(c) of the Act. It is an unsubstantiated and unsupported comparison of goods in the process of advertisement that misleads consumers and creates a deceptive market environment. Consequently, the Undertaking is blatantly in violation of the law.

82. For the foregoing reasons, the Commission finds the ISSUE C in affirmative and it is held that the undertaking is in violation of the Section 10 (1) read with Section 10 (2)(c) of the Act.

VI. CONCLUSION

83. In the view of the above discussion, the Bench concludes that the deceptive claim's impact is profound. It misleads consumers into believing that the Undertaking's product is far superior in terms of fuel efficiency while comparing with any other tractor in Pakistan, thereby influencing their purchasing decisions. The Undertaking's strategy, which hinges on the dissemination of false and misleading information as well as comparison, is both unethical and unlawful. It is crucial to uphold the standards of truthfulness and transparency in advertising to protect consumers and ensure a fair marketplace.
84. This deceptive practice compromises the integrity of the market, as it creates an uneven playing field where consumers are not able to make informed decisions based on accurate and truthful information. Thus, appropriate corrective measures must be taken to ensure transparency and integrity in advertising practices.
85. Such acts are not only designed to but in fact have the very effect of distorting fair norms of competition. Therefore, it is imperative to address and rectify such misleading claims to protect both consumers and to ensure the competitive balance on the fair and justified grounds within the marketplace. Besides, it is also essential to ensure that all advertising claims are truthful and substantiated for an informed decision by the consumer with consumer trust not undermined particularly when an undertaking is a listed company also.
86. During the final hearing, the counsel for the Undertaking, Mr. Waqas Mir, casually expressed an interest in taking corrective action—if recommended by the Commission—to address the anti-competitive effects of its Advertisement. However, this expression was made without admitting to any violation of the Act. The Bench informed the counsel that if the Undertaking wished to submit formal



commitments, it must do so in accordance with legal procedures and in compliance with the Regulations. No formal commitments have been filed by the Undertaking till date.

VII. PENALTY/DIRECTIONS

87. The Commission's Guidelines on the imposition of financial penalties (Fining Guidelines) state that the primary objective of financial penalties is to deter undertakings from engaging in anti-competitive practices and to reflect the severity of the infringement. Additionally, the amount of the penalty is determined based on factors such as the gravity of the violation, its duration, and any aggravating or mitigating circumstances.

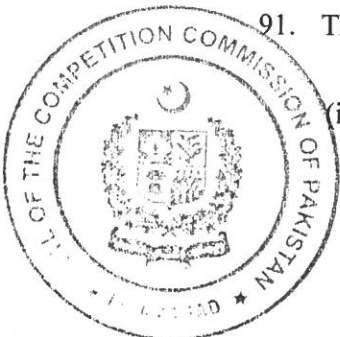
88. The advertisement, which had no reasonable basis and was falsely claiming efficiency, was disseminated by the Respondent widely through print media. The Bench believes that in such cases there is high need to deter the Respondent and similar undertakings from committing such deceptive marketing practices in future in order to protect the market integrity and consumers' interests.

89. Therefore, the Commission hereby imposes a penalty of PKR 30,000,000/- (Thirty Million Rupees) upon the Respondent for disseminating false and misleading information to the consumers related to the characteristics of their products within the meaning of Section 10(1) read with Section 10(2)(b) of the Act.

90. The Commission also hereby imposes a penalty of PKR 10,000,000/- (Ten Million Rupees) upon the Respondent for conducting and disseminating false and misleading comparison of goods in the process of advertising within the meaning of Section 10(1) read with Section 10(2)(c) of the Act.

91. The Undertaking is also hereby directed to;

- (i) cease and desist from carrying out deceptive marketing practices by suggesting that their products provide up to 30% additional fuel savings as compared to its competitors.



- (ii) modify all advertisements and promotional materials, whether through newspapers, TV campaigns, in electronic or digital media, social media posts or on their official websites, and display only truthful claims regarding their products.
- (iii) file Compliance Report with respect to the implementation of the aforementioned directions as well as deposit the penalty not later than 30 days from the date of this Order, failing which, additional penalty of PKR 100,000/- (One Hundred Thousand Rupees) per day will be payable by the Respondent.

92. In the above terms, the SCN No. 01/2024 dated 09/01/2024 to the Respondent, is hereby disposed of.

93. It is so ordered.



(Dr. Kabir A. Sidhu)

Chairman/Member



(Mr. Salman Amin)

Member



ISLAMABAD, THE 13TH DAY OF MAY, 2025.