

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT FILED BY M/S CM PAK
LIMITED AGAINST M/S TELENOR PAKISTAN (PVT.) LIMITED
FOR DECEPTIVE MARKETING PRACTICES**

BY
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DATED: May 09, 2017

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1. BACKGROUND

- 1.1. CM Pak Limited (hereinafter referred to as the '**Complainant**') through its authorized legal counsel, M/s Rauf Khalil Abbasi Raza Suhrwardy, filed a complaint against Telenor Pakistan (Pvt.) Limited (hereinafter referred to as the '**Respondent**') with the Competition Commission of Pakistan (hereinafter referred to as the '**Commission**') for alleged violation of Section 10 of the Competition Act, 2010 (hereinafter referred to as the '**Act**'), pertaining to deceptive marketing practices.
- 1.2. The Complainant, a limited unlisted company, which was licensed by the Pakistan Telecommunication Authority (hereinafter referred to as the '**PTA**') under the Pakistan Telecommunication Re-organization Act, 1996 (hereinafter referred to as the '**PTRA 1996**'), to provide cellular mobile services in Pakistan, alleged in the complaint that the Respondent had resorted to deceptive marketing practices by falsely advertising the nationwide availability of its 4G services and the price being charged for it, thereby, deliberately deceiving the consumers and attempting to harm the business interests of the Complainant.
- 1.3. Based on the preliminary fact finding, the Commission appointed Mr. Faiz ur Rehman, Assistant Director (OFT), and Ms. Fatima Shah, Management Executive (OFT), as enquiry officers (hereinafter collectively referred to as the '**Enquiry Committee**'). The Enquiry Committee was directed to conduct an enquiry into the issues raised in the complaint and to submit the enquiry report by giving their findings and recommendations, *inter alia*, on the following:

“Whether the allegations leveled in the complaint constitutes a prima facie violation of Section 10 of the Act?”

2. THE COMPLAINT

- 2.1. This section summarizes the contentions raised in the complaint:

A. Statement of Facts:

- 2.2. That the Complainant holds License No. CMT-03/LL&M/PTA/2004, dated 23.10.2014 by PTA and operates a countrywide network of cellular mobile services, having invested billions of rupees and having millions of customers across Pakistan. The Respondent is a private limited company which also operates a countrywide network of cellular mobile services and holds License No. MCT-01/RBS/PTA/2004, dated 26.05.2004, issued by the PTA.

- 2.3. That in 2014, multiple generations of technology for mobile telecommunication industry, namely '3G' and '4G', were auctioned to telecommunication licensees through public auction. The Complainant claimed that it was the only licensee to emerge victorious, having acquired a 4G license to the exclusion of all others in Pakistan.
- 2.4. It was alleged that under the Pakistan Telecommunication Authority (Functions and Powers) Regulations, 2006 (hereinafter referred to as the '**F&P Regulations**'), any telecommunication radio spectrum under any generation of technology can only be provided if there is demand among licensees exceeding supply, and even then, it is to be done through a public auction. Moreover, it was further alleged that no auction had been carried out and the band of spectrum of 4G technology was granted to the Respondent. (The matter is pending adjudication before the Honorable Islamabad High Court in Writ Petition No. 2983 of 2016.).
- 2.5. That in order for any telecommunication services to be authorized, extensive testing is done by PTA throughout Pakistan to ensure effective administration and availability of uninterrupted service in compliance with quality of service requirement under the license terms. It was alleged that that was a time consuming process as testing is done repeatedly till final resolution is achieved and compliance is ensured. However, the Respondent did not comply with any of the pre-commencement procedures or testing and on 8.8.2016, publicly announced that it had commenced its 4G services through extensive advertisements.
- 2.6. That the said 4G services were advertised as available for subscription by customers by the Respondent. However, the 4G services were mostly unavailable in the vast majority of the 17 telecommunication Regions in Pakistan.
- 2.7. That the Respondent's advertisements for its 4G services in newspaper stated clearly that its 4G services were available for use by customers in a handful of cities, namely Karachi, Lahore, Islamabad, Peshawar, Multan, Faisalabad and Swat and were not available nationwide. However, on the contrary, far from being available countrywide, the Respondent's 4G services were not even available in most parts of the cities advertised. It was alleged that the Respondent's 4G services were only available in merely a few specified points within the handful cities advertised which comprises of clear and unambiguously deceptive marketing by the Respondent.
- 2.8. It was also alleged by the Complainant that the Respondent resorted to deceptive marketing practice as its 4G SIMS were not even available for purchase, contrary to the advertisements, from its authorized vendor and consumer's name was placed on a waiting list awaiting the possibility of 4G services becoming available.

2.9. It was further alleged in the complaint that the Respondent had recently published on its official website in the 'Frequently Asked Questions' section an admission of such widespread unavailability of the services it had been extensively marketing. The 'Frequently Asked Questions' section states that:

*"Will Telenor 4G network coverage be available across the country?
We are initially launching with selected areas in Karachi, Lahore, Islamabad,
Peshawar, Multan, Faisalabad and Swat"*¹

2.10. In addition to the clearly deceptive marketing by the Respondent in terms of the geographical availability of its 4G services, it was submitted that it had, through television advertisements, further deliberately misled customers regarding the costs of using its 4G services.

2.11. Moreover, it was alleged that the Respondent had declared in its advertisements, "***Telenor 4G: Bilkul Free (Telenor 4G: Absolutely free!)***", which was in fact not the case. In reality, only the first 100MBs of data were provided free of charge and once this bundle was exhausted, the Respondent would deduct the customer's account balance till it was fully exhausted. In this reference, the Complainant submitted an article published by a web magazine, 'Propakistani', titled, "*Telenor is Blatantly Misleading 39 Million Customers in Pakistan*".²

2.12. Furthermore, it was alleged that the Respondent, deliberately deceiving telecommunication consumers, misled them into (1) subscribing to a service which was not provided by the Respondent; and (2) switching away from the 4G network of the Complainant.

2.13. In conclusion, the Complainant prayed that the Commission may inquire and investigate into the said contraventions and impose penalties upon the Respondent for violating the Act. It was also requested that any and all interim orders and directions may be passed to protect the Complainant and the rights of its customers or any other telecommunication users.

B. Summary of Contraventions:

2.14. As per the complaint, the deceptive marketing practices of the Respondent were harming the market share of the Complainant by falsely advertising the availability of a service

¹ Available at: <https://telenor.com.pk/help-support/faQ/4G/>

² <https://propakistani.pk/2016/10/31/telenor-blatantly-misleading-39-million-customers-pakistan/>

which was in fact not being provided. That the damage done to the Complainant could not be undone and remained irremediable. Thereby, comprising a clear violation of Section 10(2)(a) of the Act.

- 2.15. The Complainant further alleged that the Respondent was in breach of Section 10(2)(b) of the Act through '*distribution of false [and] misleading information*' which was '*lacking a reasonable basis*' due to misinformation regarding the availability of the service; '*related to price*', as a chargeable service being marketed as a free giveaway, '*properties*' of the service in terms of its geographical availability as well as its price and '*suitability for use*' pertaining to the unavailability of the service for customers' use. Thus, constituting a clear violation of Section 10(2)(b) of the Act, demanding rectification.
- 2.16. That the Respondent's failure to disseminate truth regarding the availability of 4G services to potential customers had been done with a *mala fide* intent to further its own commercial interests, to the detriment of both, the customers and the Complainant.
- 2.17. That the Respondent failed to meet the quality of service requirements, prior approval of the PTA to ensure uninterrupted service and license terms as provided under the operator's license. Thus, in breach of such procedures as well as the Act, the Respondent had illegally, maliciously and deliberately resorted to deceptive marketing practices by marketing its ostensible 4G services available for use all over Pakistan and free of cost, which was neither available for use, nor free of cost, to the severe prejudice of the customers along with that of the Complainant, hence, requiring correction.

C. Relief:

- 2.18. The Complainant humbly requested the Commission to inquire and investigate into the said contraventions by relying upon the facts and evidence disclosed and as a consequence thereof;
- a) Declare the Respondent's misleading marketing a contravention of the provisions of the Act and hence, require the Respondent to not only immediately cease any such publication but issue a formal clarification regarding the unavailability of the service for customer's use; and
 - b) Declare the marketing of 4G services as free giveaways to be in contravention of the Act and require the Respondent to cease such marketing immediately and issue a formal retraction that such ostensible services, if provided lawfully, are in fact not free of cost; and
 - c) Impose penalties upon the Respondent in respect of contraventions committed by it under the Act;

- d) To pass any further orders or any and all interim orders and directions to protect the Complainant and the rights of its customers as well as to restrain any continuing illegality on the part of the Respondent.

3. CORRESPONDENCE WITH THE RESPONDENT AND THE COMPLAINANT

- 3.1. The complaint, vide letter dated November 25, 2016, was forwarded to the Respondent for comments. The Respondent, via letter dated December 05, 2016, requested for an extension which was granted by the Enquiry Committee through a letter dated December 05, 2016. The Respondent, after hiring a legal counsel, M/s Hassan Kaunain Nafees, requested for a further extension via letter dated December 15, 2016, which was granted to it vide a letter dated December 16, 2016. The Respondent, through its legal counsel, submitted its reply vide letter dated December 26, 2016, the contents of which are in the following paras.
- 3.2. It was submitted in the reply that the complaint filed by the Complainant was frivolous and the Respondent, at the outset, denied all allegations leveled against it. It was further submitted that the Respondent should have been engaged prior to commencement of the inquiry. It was stated that the Complainant had failed to substantiate its allegations and hence, the inquiry should not have been initiated. It was presented that the evidence submitted by the Complainant against the allegations were, in fact, contrary to the claims, which were further discussed in detail vide para wise comments.
- 3.3. The Respondent submitted that it was not involved in deceptive marketing practices and therefore, was not violating provisions of Section 10 of the Act.
- 3.4. With reference to the contentions pertinent to the grant of the 4G technology on the 850 MHz frequency spectrum to the Respondent by PTA without an auction, it was submitted that the Complainant had no *locus standi* to make such claims a premise for alleged violation of Section 10 of the Act as the matter was *sub judice* before the Honorable Islamabad High Court in Writ Petition No. 2983 of 2016.
- 3.5. As for any allegations in relation to testing or non-compliance with pre-commencement procedures, the Respondent submitted that the matter would fall within the purview of the sector specific regulator and not in the domain/jurisdiction of the Commission. Moreover, it was submitted that even then, the Complainant was merely making assumptions, without submission of cogent evidence in this regard.
- 3.6. Moreover, for the allegations of deceptive marketing in terms of the geographical availability of its 4G services, the Respondent vehemently denied all contentions. It

submitted that while advertising its 4G services, it was ensured that the information related to limited availability of its 4G services in '*selected areas*' of a few cities was disclosed clearly and conspicuously to the consumers.

- 3.7. The Respondent further submitted that the accusations made and the relevant evidence submitted by the Respondent were in fact self-contradictory as the Complainant had itself stated that the newspaper advertisements by the Respondent pertinent to its 4G services clearly mentioned that they were not being provided nationwide and hence, the grievances by the Complainant were misconceived.
- 3.8. The Respondent, in reference to the newspaper article that was presented by the Complainant, submitted that the article itself mentioned clearly that the Respondent's 4G services had been "*Switched on in selected areas of Karachi, Lahore, Islamabad, Multan, Peshawar & Swat.*" It was submitted that contrary to the Complainant's contentions, the Respondent was in fact marketing clearly that the services were available "*in selected areas*", which the Complainant had failed to appreciate and the Commission might note.
- 3.9. It was further submitted that the 'Frequently Asked Questions' quoted by the Complainant itself had acknowledged that the Respondent had made open admission of limited geographical availability of its services.
- 3.10. The Respondent submitted that the complaint related to the non-availability of 4G SIMs from Respondent's authorized vendor was without merit. As per Respondent's knowledge, 4G SIMs were readily available in the market and the onward duty of sale and distribution to customers was dependent on the retailer/vendor.
- 3.11. The Respondent further submitted that all allegations related to deliberately misleading the customers regarding the cost of using its 4G services were denied. In this regard, it was submitted that the Complainant had failed to substantiate such allegations with any evidence. As for the allegation that the Respondent misled customers through its advertisement by marketing that 4G was '*Absolutely Free*' and by not disclosing that only 100 MBs of data were provided free of charge, it was submitted that the Complainant had relied on just one article on a website by the name of 'Propakistani'. Copy of the article was attached. However, it was submitted that it had been concealed that the same website posted a subsequent article which had appreciated Respondent's efforts of clearing the misconception with the following disclaimer³:

*"Enjoy Telenor 4G for free with a daily limit of 100 MBs.
This is limited time offer"*

³ <https://propakistani.pk/2016/11/02/telenor-introduces-new-4g-campaign-clarity/>

The reply from the Respondent stated in para 9 c,

“Hence, concern (if any) that the Complainant may have had stands rectified”

- 3.12. The Respondent submitted that the billboard advertisement used by the Complainant to support its contentions was actually contrary to the allegation that Respondent’s 4G services were entirely free, as the words, “100 MBs Daily Free”, were clearly placed on the said billboard.
- 3.13. It was, therefore, submitted that the Complainant had failed to provide cogent evidence for its allegations as the Respondent had, on all mediums, clearly marketed all aspects of its services. That the marketing campaign of the Respondent was in no way contrary to the true position of its 4G services. That it was in no way capable of giving the wrong impression and mislead consumers. Hence, the Respondent submitted that the alleged violations of Section 10(2)(a) and 10(2)(b) were invalid and baseless.
- 3.14. In conclusion, the Respondent alleged that the complaint seemed to be filed out of business rivalry and such mischief was only aimed to abuse the process of law, as the Respondent’s advertisements had always shown its *bona fide* intention to facilitate consumers to make a more informed decision. It was, therefore, prayed for that the complaint might be dismissed on the basis of being vexatious and frivolous and that the appointment of the enquiry committee was annulled due to presence of complete disclosures by the Respondent and the poorly substantiated and self-contradictory allegations by the Complainant.
- 3.15. The reply of the Respondent was sent to the Complainant for rejoinder on December 27, 2016. On January 05, 2017, the Complainant submitted its rejoinder/comments to the Respondent’s reply via its legal counsel.
- 3.16. The rejoinder stated that the Respondent had failed to present or plead any defense to the complaint and had deliberately misstated procedural laws of the Commission by raising objections on appointment of Enquiry Committee prior to receiving Respondent’s response to the complaint. It was submitted that under Section 37(2) of the Act and 17(2) of the Competition Commission (General Enforcement) Regulations 2007, the Commission neither needed a response from the Respondent nor a subsequent analysis as a requirement to appoint the Enquiry Committee.
- 3.17. That the Respondent, by denying the allegations of deceptive marketing and by falsely stating that its advertisements ensured ubiquitous disclosures pertinent to limited coverage of its 4G services, was making out a willful, deliberate and *mala fide* misstatement of the

facts. It was submitted that on the contrary, the Respondent's advertising campaign did not inform customers of this fact at all.

3.18. That even though the Respondent's 4G service was unavailable through the vast majority of the country, it had launched a deceptive massive advertising campaign not only through the electronic, print and social media, but also at retail outlets/points of sale. The Complainant also submitted evidence of the Respondent's deceptive marketing campaign conducted through various mediums which have been discussed below:

(a) Retail Outlets/Points of Sale/Outdoor Advertising

- i) As per the rejoinder, a banner was placed on the Jinnah Avenue, Islamabad, flyover bridge with the words "WE ARE 4G" printed on it. However, no information was provided as to the unavailability of its 4G services in most areas of Pakistan. Relevant photographs were annexed.
- ii) The Complainant referred to a poster placed on a pillar outside a PCO on Murree Road, Rawalpindi, as one of the countless retail outlets where the Respondent's 4G services were being advertised. The Complainant alleged that a larger version of this poster was available on 'Behance', website of an advertising agency, which states, "*Sacha saath, jo harr jagha nibhaaya jaaye*", which translates to, 'True companionship, fulfilling at every place'. It was submitted that this conduct amounted to deceptive marketing as it gave the false pretense of nationwide coverage and deliberately informed the customers, contrary to the truth, that the 4G services were available in 'every place/harr jagha'. Relevant photographs were annexed.
- iii) Various adverts by the Respondent that were located at busy public places were annexed which marketed the 4G services without clarifying the customers regarding its vast unavailability. Relevant photographs were annexed which included banners installed at various locations, such as Jinnah Avenue, Islamabad, Boom Boom Mobile Store (Murree Road, Rawalpindi), F-8 Markaz (Islamabad), Ammar Chowk (Rawalpindi).

(b) The Respondent's Official Twitter Account

3.19. Various video adverts were referenced in this section that were present on the Respondent's official twitter account.

- i) A clip of video advert related to Respondent's services in Balochistan was annexed in which the words "*Unleash your limitless potential as you embark on a journey across Balochistan with Telenor 4G!*" were used which, according to the Complainant, implied that the Respondent's 4G services were available throughout Balochistan. Whereas as per the Complaint, these services are only available in limited areas of Quetta, evidenced by the Respondent's 4G Coverage Map.
- ii) Similar adverts were also annexed displaying a similar campaign for Khyber Pakhtunkhwa (KP), with the words, "*Unleash your limitless potential as you embark on a journey across KPK with Telenor 4G!*" in which a few people in KP were shown using Respondent's 4G services throughout KP. Hence, it was submitted that the Respondent's conduct constituted distribution of false and misleading advertisement which might entice the potential customers into obtaining the Respondent's ostensible services.
- iii) A clip of another digital advert stating, Telenor 4G – "*Sacha Saath, Jo Harr Jagha Nibhaaya Jaaye*" , translated as, 'True companionship, fulfilling in every place', was annexed which, as per the rejoinder, was duping potential customers into believing that the Respondent's ostensible 4G services were available throughout Pakistan.

(c) The Respondent's Official Facebook Page

3.20. Various clips of Respondent's Facebook page were annexed to demonstrate violations committed by the Respondent, discussed below:

- i) It was submitted that the Respondent was also marketing its 4G services on its official verified Facebook page, without giving any disclaimer related to the limited geographical availability. As per the rejoinder, the annexed advert of 4G Hotspot Mi-Fi stated, "*Sacha saath, jo harr jagha nibhaya jaaye*", implying wide coverage of its services. The Complainant alleged that by doing so, a large number of Facebook users were being persuaded into believing that the Respondent provides wide coverage throughout Pakistan. The Complainant submitted two instances where deception took place at individual level as a direct consequence of those adverts.
- ii) Clips of other adverts of 4G Enabled Smartphones were annexed with the message, "*Saacha Saath, Jo Harr Jagha Nibhaaya Jaaye*", which, according to the Complainant, amounted to deceptive marketing by various means, i.e.,

mobile phone and online popular shopping website, etc. However, it was submitted that no disclaimers about the limited coverage and/or no coverage at all in some areas were given.

(d) Advertising/Marketing Material

3.21. It was submitted by the Complainant that the marketing content displayed on the official website of Behance, an advertising agency, states, “*Ab app kay sheher mein*”, i.e., ‘*Now in your city*’, over images of the various cities. It was alleged that these images gave the impression to the consumers that the Respondent’s 4G services were available all over the cities stated below. The subsequent coverage maps of these cities showed that most of the areas were in fact without 4G services. This information, according to the Complainant, was deliberately withheld from customers in the main adverts referenced here. Below is the list of cities that were mentioned in the adverts and annexed to display the aforementioned claims.

- i) Faisalabad – “*Ab app kay sheher mein*”. The relevant coverage map was attached as well.
- ii) Islamabad – “*Ab app kay sheher mein*”. The relevant coverage map was attached as well.
- iii) Karachi – “*Ab app kay sheher mein*”. The relevant coverage map was attached as well.
- iv) Multan – “*Ab app kay sheher mein*”. The relevant coverage map was attached as well.
- v) Lahore – “*Ab app kay sheher mein*”. The relevant coverage map was attached as well.
- vi) Peshawar – “*Ab app kay sheher mein*”. The relevant coverage map was attached as well.
- vii) Another advert which showed images of landmarks from various cities stating “*Experience now in your city*” was annexed, which had no information about the limited services in some areas within those cities. This conduct, according to the Complainant, amounted to deceptive marketing.

(e) Television Commercials

3.22. The Complainant also submitted three TVCs of the Respondent pertinent to its 4G services.

(f) Impact of Deceptive Marketing on Competition in the Market

3.23. In the final section of the rejoinder, the Complainant discussed the impact of alleged deceptive marketing practices of the Respondent. It was submitted that the Respondent, by concealing the truth about its limited 4G services, had actively indulged in deceptive marketing. That its adverts contained such statements, language and images which were capable of misleading/misinforming the customers by implying that it had wide ranging coverage nationwide. Consequently, the competition in the market/industry had been distorted in the following manner:

- i. That the Complainant being the only licensed 4G operator in Pakistan, held the largest share in the market for licensed 4G services. When the Respondent launched its 4G services, in limited parts of a handful of cities, it knowingly marketed and advertised its 4G service as (1) available throughout Pakistan and (2) free of cost, to cut into the established market share of the Complainant.
- ii. Through this deceptive marketing campaign, many of the Complainant's former customers proceeded to opt for the Respondent's 4G services believing it to provide full coverage and that too, free of cost.
- iii. That the Respondent benefited from its deceptive marketing campaign in terms of both market share and financial gain at the cost of the Complainant. It was submitted that if the consumers were informed the truth about the Respondent's 4G services, they would not have opted for it.
- iv. That it was evident that the Respondent's deceptive marketing campaign was aimed at distorting competition in the market at the expense of the Complainant. That the Respondent might ensue removing some deceptive marketing content, which to the knowledge of the Complainant it had already started doing. However, it was submitted, that such subsequent removal was neither beneficial to the customers nor the Complainant, as both had already been a victim of the Respondent's initial misleading marketing campaign.
- v. That the conduct of the Respondent was evidently pursued with the intent to distort prevailing market conditions, for as long as the duration of its deceptive campaign could last, to the detriment of the customers and the Complainant. It was submitted that the Respondent had been successful in its motive.

3.24. It was further submitted in the rejoinder that the Respondent justified its deceptive marketing on the basis of a particular advertisement on its own website to imply that sufficient information had been provided to customers. In this reference, it was stated that:

- i. The insufficient information provided in the majority of the campaign had already been discussed earlier. The vast majority of advertisements contained insufficient information and the overall language and images used providing false information could not be justified on the basis of ambiguous clarification in the 'Frequently Asked questions' section of its own website. As in order to enable consumers to make informed decision, advertisements must be conspicuously visible to the viewers and they should not have to explore for it around its website or elsewhere.
- ii. The information pertinent to coverage of its 4G services was obviously crucial to the decision making of the potential customers which was not displayed appropriately.
- iii. The Respondent's reply suggested that it had adequately communicated to customers that its 4G services were not free and only first 100MBs were free of cost. Referring to the Respondent's reply to the allegations pertinent to the article that appeared on the website, 'Propakistani', the Complainant alleged that the Respondent admitted the fact that the inclusion of the latter information was done subsequently, after it had already gained the full benefit of the initial false and deceptive marketing.
- iv. The Respondent's claim, "**Telenor 4G - Bilkul Free**", could still be seen in the TVCs and other video adverts on the Respondent's official twitter and Facebook pages online, stating that its 4G services were free of cost, without any disclaimer in the entire adverts pertinent to the fact that they would be charged after the first 100 MBs had been utilized. Consequently, customers were deceived into availing the service only to realize that the service was free merely for first 100MBs, after their balance ran out.

3.25. It was finally submitted that the Respondent had resorted to various irrelevant and unethical practices to disprove the instant complaint by threatening the Complainant with allegations of deceptive marketing. The Honorable Commission was requested to take notice of the Respondent's attempts to raise irrelevant issues to distract the attention from the matters complained of and requested to restrain such behavior. Finally, the Complainant further requested the Commission to take punitive measures against the Respondent for its *mala fide* marketing campaign which was conducted to mislead the

consumers, cheat the Complainant and harm the competition as a whole in the relevant market.

4. ANALYSIS

- 4.1. As mentioned in Para 1.3. *ibid*, the mandate of the enquiry is to determine whether, *prima facie*,
- a. the Respondent's conduct is "*capable of harming the business interest of another undertaking*" such as the Complainant in violation of Section 10 of the Act in general and Section 10 (2) (a) in particular.
 - b. the Respondent is violating Section 10 of the Act in general and Section 10 (2) (b) in particular, through "*distribution of false [and] misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, properties, and suitability for use of services.*"
- 4.2. The cellular network industry of Pakistan is one of the most competitive and innovative industries in Pakistan. Currently, it is based on four major Cellular Mobile Operators (CMOs) out of which all are providing 3G services, whereas only three of them are providing 4G services.⁴ PTA is the telecom sector regulator.
- 4.3. The Complainant at various occasions submitted that the Respondent had been granted 4G license by the PTA without an auction and that it did not comply with any of the pre-commencement procedures or testing. However, it is submitted that these assertions are outside the scope of this enquiry report and that the matter is already pending adjudication before the Honorable Islamabad High Court in Writ Petition No. 2983 of 2016.
- 4.4. As mentioned earlier, the analysis of the facts for the purpose of this enquiry report will be focused on evaluating whether the marketing campaign launched by the Respondent for its 4G services was deceptive in terms of Section 10 of the Act. Before moving forward to the analysis, it is important to state that the following two facts have been established during the process of enquiry by means of statements made and information provided by the Respondent through various mediums:
- i. Only first 100 MBs of 4G internet were being given free of cost daily by the Respondent.

⁴ http://www.pta.gov.pk/ann_report_171116.pdf, pg. 52

- ii. For the time span between the launch of the marketing campaign under investigation to date, the Respondent's 4G services are available in selected areas of a few cities in Pakistan.
- 4.5. Subsequently, it is also necessary to establish as to what constitutes as violation of Section 10 of the Act. The Commission, in its order held against M/s CMPak Limited⁵, has defined "false" and "misleading" information as deceptive marketing practices in the following manner:

False Information:

'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.

Misleading Information:

"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."

- 4.6. Consequently, it can be concluded from the excerpt above that deceptive marketing practices would have been resorted to if information is distributed to the consumers in a vague manner or where certain material information has been omitted due to which it has the ability to mislead consumers, even if done so unintentionally. Resultantly, misleading information of this nature has the ability to give a wrong impression to the consumers pertinent to the commodity, leading towards a decision taken by them which they would not have taken under different circumstances, to the detriment of the consumer.

⁵ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

- 4.7. Therefore, such false and misleading information would amount to deceptive marketing practices. Furthermore, according to Section 10(2)(b) of the Act, "*the distribution of false or misleading information to consumers*" is violable under the Act.

Overall Net General Impression of the Marketing Campaign

- 4.8. In order to examine the probability of deception, the overall net impression of the advertisement is taken into account. Referring to one of its orders, the Federal Trade Commission (FTC) of the United States of America (USA), in its 'FTC Policy Statement on Deception', has cited, "[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts."⁶ Similarly, for the purpose of this enquiry report, the same approach will be taken by the Enquiry Committee as well.

I. Distribution of False and Misleading Information Related to the Service Charges of the 4G Services

- 4.9. In this section, the Enquiry Committee will venture into determining whether the marketing campaign of the Respondent amounted to distribution of false and misleading information related to the service charges of the 4G services in *prima facie* violation of Section 10(2)(b) of the Act.

a. Television Commercials (TVC)

- 4.10. In order to advertise its 4G services, the Respondent launched a nationwide campaign, including various TVCs, which will be discussed in this section. The Respondent initially launched four advertisements nationwide with varied stories, where all were based on a similar theme. Built around various concepts, such as readily available recipes on internet to assist in cooking; quick access to vast amount of knowledge available on the internet instead of having to go to libraries; availability of fast internet connecting families continents apart; and easy access to legal information/documents to avoid red tape and exploitation; all four TVCs have background vocals at the end stating the same tag line,

*"Jab internet taizi say saath nibhaye, tou soch ki technology badal jaye.
Telenor 4G-Bilkul Free!"*

- 4.11. The TVCs largely contained two messages. Firstly, it emphasized on the introduction and availability of a faster internet based technology, i.e., 4G internet by the Respondent.

⁶ FTC Policy Statement on Deception. DATE: October 14, 1983

Moreover, it is being claimed that the services are ‘absolutely free’, translated from “*bilkul free!*”

4.12. In this reference, it should be noted that a disclaimer appears at the bottom of the screen when the statement, “*Jab internet taizi say saath nibhaye, tou soch ki technology badal jaye.*”, is being said. The disclaimer appears in Urdu stating,

“ • *100 MBs rozana • Yeh offer mehdood muddat kay liye hay”

Translation: - 100 MBs daily - This offer is available for a limited time period

A clip of one of the TVCs is presented below:



However, the statement, “*Telenor 4G, bilkul free!*”, is said at the end of the TVC when the following clip appears in the TV.

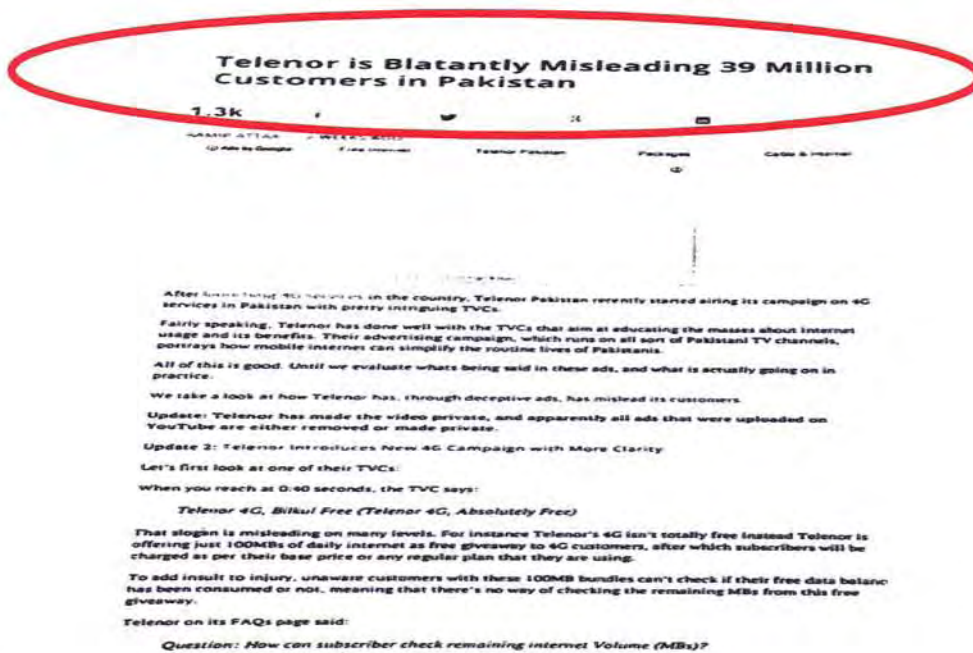


4.13. In light of the above, various observations have been made. Firstly, the disclaimer appears at the bottom of the screen in an illegible font size and that too only for approximately one second. Secondly, it appears at the time when the statement, “*Jab internet taizi say saath nibhaye, tou soch ki technology badal jaye.*”, is being said.

4.14. It should be important to note that the statement, “*Telenor 4G, bilkul free!*”, is not said simultaneously with the aforementioned disclaimer. It is stated afterwards, at the end of the TVC, while the visual displayed above is being shown. Hence, it is difficult to find the connection between the claim, “*Telenor 4G, bilkul free!*”, and the disclaimer that only 100 MBs are free for a limited time period.

b. Articles on Web Magazine ‘Propakistani’

4.15. Moreover, with regard to the articles that appeared on the website, ‘Propakistani’, pertinent to which the Complainant submitted that the article discussed how the Respondent had been involved in deceiving customers (the relevant article is reproduced below⁷), the Respondent refuted these allegations stating that a subsequent article was published on the same website, appreciating the initiative of the Respondent of rectifying its TVCs and adding disclaimers in them afterwards.



4.16. In this reference, it is observed that the subsequent article appreciates the act of ‘rectification’ by the Respondent⁸. Therefore, referencing an article itself (the Respondent)

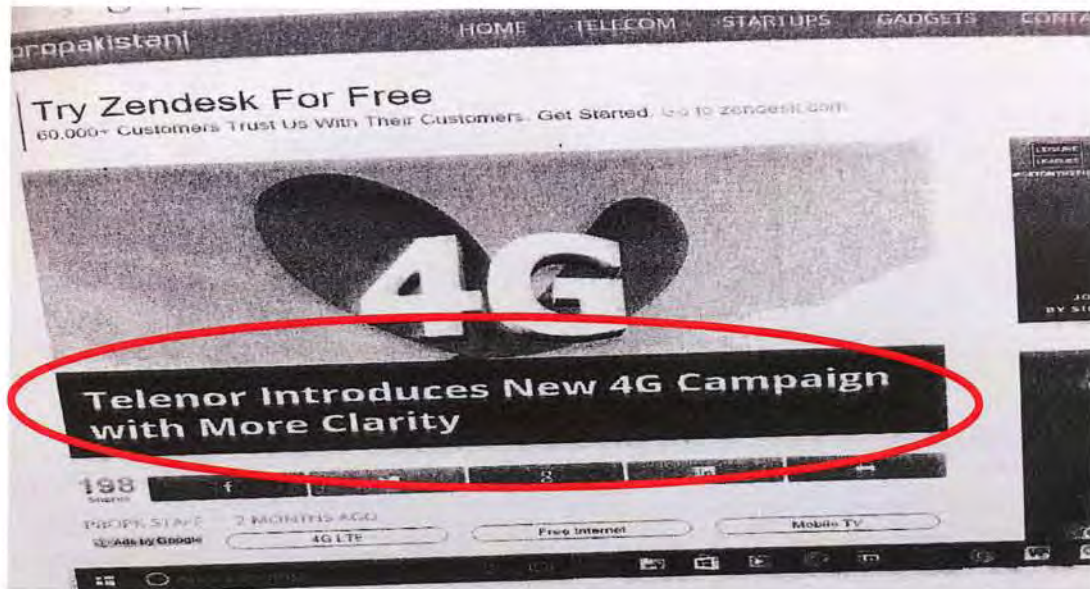
⁷ <https://propakistani.pk/2013/12/06/telenor-bluntly-misleads-its-customers-in-pakistan/>
<https://propakistani.pk/2016/10/31/telenor-blatantly-misleading-39-million-customers-pakistan/>

⁸ Paras 3.11. and 3.24. *ibid*

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which admits that a mistake was in fact made, strongly suggests that the former TVCs of the Respondent were indeed without disclaimers.

4.17. The image of the article referenced by the Respondent itself acknowledging the rectification made by the Respondent is reproduced below⁹:



As it can be seen above that the article, submitted by the Respondent itself, is stating that the Respondent “Introduces New 4G Campaign with More Clarity” which clearly suggests that the older campaign launched by the Respondent was ‘not’ clear with respect to material information that is capable of affecting consumer decision making process. Consequently, by making a false and misleading absolute claim pertinent to price and properties of its services such as “Telenor 4G, bilkul free!”, without any disclosures at all, amounts to *prima facie* violation of Section 10 of the Act, particularly sub-Section 10(2)(b).

4.18. Nonetheless, even if it is assumed that the disclaimers have always been present, the legibility of the disclaimers used in the aforementioned TVCs is highly objectionable. On the soundness and strength of a disclosure, it should be noted that the disclaimers ought to be, *inter alia*, legible, appropriately placed, easily audible and comprehensible, and should appear for a time period long enough for the ordinary consumers to be able to read/hear and comprehend them with ease. Moreover, the statements in the main claim should not be such that the information given in the disclaimers completely alter the meaning of the overall message given in the advertisement. That is, the message conveyed in the main

⁹ <https://propakistani.pk/2016/11/02/telenor-introduces-new-4g-campaign-clarity/>

claim and the overall advertisement should not be significantly changed when read with information given in the disclaimers.

4.19. In this reference, the FTC has elaborated this concept in its 'FTC Policy Statement on Deception', dated October 14, 1983, stating¹⁰,

"Commission cases reveal specific guidelines. Depending on the circumstances, accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation. Other practices of the company may direct consumers' attention away from the qualifying disclosures. Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser. Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices."

The excerpt referenced above explains how a statement such as "bilkul free!", i.e., absolutely free, is insufficiently corrected by the mere illegible disclaimer stating that only 100 MBs are without any charges and that the users will be charged for the remaining usage. Moreover, the fact that the disclaimer is illegible and is unlikely to be associated with the "bilkul free!" claim due to its timing and font size, makes it further inadequate. In this reference, the same policy statement has further presented its view in the following manner:

"Qualifying disclosures must be legible and understandable. In evaluating such disclosures, the Commission recognizes that in many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller."

4.20. Therefore, in light of the above discussion, by initially not adding any disclaimers at all, followed by adding illegible disclaimers that contradict the absolute claim of the 4G services of being absolutely free, it can be concluded that the Respondent has been involved in distribution of false and misleading information to the consumers that lacks a reasonable basis related to its price and properties, *prima facie*, in violation of Section 10 of the Act.

¹⁰ FTC Policy Statement on Deception, pg. 4

II. Distribution of False and Misleading Information Related to the Coverage of the 4G Services

4.21. In this section, the Enquiry Committee will venture into determining whether the marketing campaign of the Respondent amounted to distribution of false and misleading information related to the coverage of the 4G services in *prima facie* violation of Section 10(2)(b) of the Act.

4.22. The Respondent, in order to advertise its newly launched 4G services, initiated an extensive nationwide campaign. As asserted by the Complainant and acknowledged by the Respondent at various occasions, the availability of these services is geographically very limited, i.e., it is available only in the selected areas of a few cities, namely Karachi, Lahore, Islamabad, Multan, Peshawar and Swat. Nonetheless, violation of Section 10 of the Act would only be deemed to have taken place if the Respondent has not disclosed this vital information clearly and conspicuously at all mediums of advertisements.

4.23. Therefore, in order to determine whether the nationwide campaign of the Respondent pertinent to its limited services is deceptive or not, various aspects of its marketing campaign will be thoroughly analyzed in this section. This will be done by evaluating the overall net general impression disseminated by it.

a) Television Commercials (TVCs) and Videos

4.24. One of the major allegations made by the Complainant against the marketing campaign of the Respondent is that the 4G services provided by the Respondent have very limited geographical availability, whereas the nationwide marketing campaign gives off an impression that the said services have a wide coverage. In the TVCs referred to earlier in para 4.10. *ibid.*, the four TVCs end with background vocals stating the same tag line,

*"Jab internet taizi say saath nibhaye, tou soch ki technology badal jaye.
Telenor 4G-Bilkul Free!"*

The above tagline emphasizes on the companionship of fast internet services everywhere, especially taking into consideration the various scenarios shown in the four TVCs.¹¹

4.25. Another TVC of the Respondent focused on marketing its weekly call offer ends with the visuals shown below:

¹¹ All TVCs and referenced videos are available on either the official Twitter or Facebook accounts of the Respondent

https://www.facebook.com/pg/TelenorPk/videos/?ref=page_internal



In this TVC, there are no vocals or written text pertinent to Respondent's 4G services. However, the TVC ends with the visual presented above which states, "telenor 4G". It should be noted that once again, no disclosures have been displayed to clarify the limited geographical availability of the Respondent's 4G services.

4.26. Furthermore, even though this particular TVC is not about the Respondent's 4G services, nonetheless, being part of a nationwide campaign, the viewers around the country are most

likely to register that last visual of the TVC which states “*telenor 4G*” without any disclosures. Owing to the nature of the service, it would also be reasonable for the viewer to assume that the coverage of this service is at least as wide as its 3G services or 4G services of other competing undertakings. Subsequently, giving an overall general impression to the potential consumers throughout Pakistan that the Respondent is now providing 4G services without considering this important information.

4.27. Below are various clips of another TVC launched by the Respondent. The theme of this TVC revolves around the concept of the Respondent’s support for sports related dreams of everyone around the country. The TVC has only three written messages throughout the TVC and no vocal message. The TVC starts off with the message shown in the first image shown below, i.e., “*telenor 4G-proud sponsor of – the passion of millions...*”. The rest of the TVC shows various daily routine moments from lives of different people and how they incorporate sporty gestures within them, with a famous sports cheer playing in the background.





Throughout the TVC, there is logo of “*telenor 4G*” at the top left corner of the screen, as shown above.



The TVC ends with the last image shown above with a final message, “*Har khilari kay saath-telenor 4G*”.

4.28. Once again, as in the case of the previous TVCs discussed, the Respondent is advertising its 4G services nationwide. However, its services have extremely limited coverage and the TVC is not clarifying this material information which is capable of causing widespread consumer deception and injury.

4.29. Another video playing on the TV is of a song based on a theme of a traveler who is traveling around the country, from Sindh (South of Pakistan) to Gilgit-Baltistan (North of Pakistan). The song is called “*Rawaan*”. Below are certain images of the video. The text pertinent to the locations displayed within the video is reproduced with the relevant clips.



River Indus at Sukkur | Sindh

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Thar Desert | Sindh



Mithi Village | Interior Sindh



Ganz-Near Pak Iran Border | Balochistan



Gurdwara Panja Sahab | Hasanabdal – Punjab



Eagle's Nest, Hunza Valley – Gilgit Baltistan



Pak China Border / Khunjarab Pass | Gilgit Baltistan

4.30. The song/video referenced to above shows a man travelling around the country, which includes interior areas of Sindh, Balochistan, Punjab, and the northern borders of Pakistan. The video also shows him using mobile internet during his journey. Relevant clips have been reproduced below:



4.31. The image displayed above shows the traveler using telenor 4G Wingle.



4.32. The song ends with the image reproduced above while stating vocally,

“Telenor ka tez tareen 4G, ab aap kay sheher main.”

The clip also shows the disclaimer,

“Karachi, Lahore, Islamabad, Peshawar, Quetta, Multan, Faisalabad”

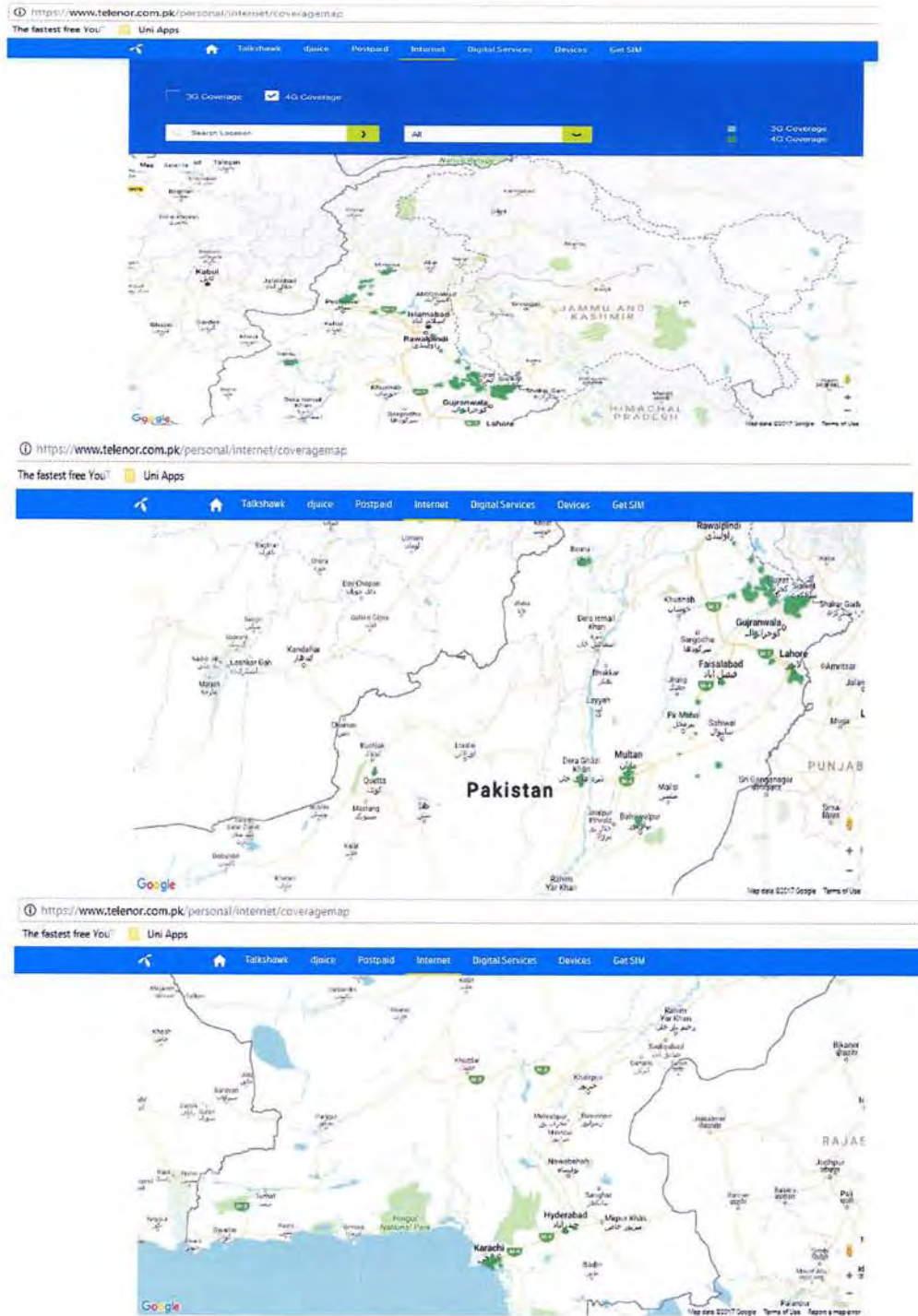
It should also be noted that during the whole song, the icon, “*telenor 4G*”, constantly appears on the top left corner of the screen as can be seen in the various random clips of the TVC.

4.33. While evaluating the video referenced to above, it can be observed that the Respondent is giving an overall general impression that its 4G services are now available throughout the country, even in the interior regions of the various provinces. Moreover, the second image reproduced above shows the traveler using telenor 4G Wingle. It should further be noted that internet devices, such as 4G Wingle, 4G Mifi, etc., are also dependent on network coverage (which even in this case are limited) and its use does not ensure provision of internet services everywhere.

4.34. Finally, an audio statement such as *“Telenor ka tez tareen 4G, ab aap kay sheher main.”* further reinforces the impression that the Respondent’s 4G services are now available in all cities. Inserting a disclaimer with a list of cities, i.e., *“Karachi, Lahore, Islamabad, Peshawar, Quetta, Multan, Faisalabad”*, is, firstly, an incomplete disclaimer as the services are available in ‘selected areas’ of these cities. Secondly, it is insufficient to rectify the overall message distributed by this video as the overall message disseminated

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in the video is much stronger which implies a nationwide coverage of the service, especially when taken in connivance with the statement, “*Telenor ka tez tareen 4G, ab aap kay sheher main.*”, which is more likely to remain in the viewer’s mind compared to the list of cities given at the end of the video.



Telenor 4G Coverage Map for Pakistan (area shaded dark green)

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4.35. The coverage maps above display the very limited coverage of the Respondent's 4G services across Pakistan, in contrast to the overall net general impression of its song video and the remaining marketing campaign. Furthermore, as per the guidelines referenced in para 4.19. *ibid*, the viewer is most likely to remember the overall message disseminated by an advertisement and ignore the (inadequate) qualifiers. Moreover, a qualifying disclaimer that appears afterwards is least likely to correct the impression that has been conveyed by the main headline or advertisement. Therefore, this conduct of the Respondent amounts to distribution of false and misleading information to the consumers that lacks a reasonable basis related to properties and suitability for use of its 4G services, *prima facie*, in violation of Section 10 of the Act.

b) Retail Outlets/Points of Sale/Outdoor Advertising

4.36. In this section, the outdoor advertisement campaign of the Respondent at various retail outlets, point of sales, etc., will be discussed in light of Section 10 of the Act. The submissions by the Complainant pertinent to the aforementioned advertisement material were thoroughly analyzed. Moreover, a picture of a shop hoarding was found by the Enquiry Committee on Warsak Road, Peshawar, advertising Respondent's 4G services, however, without any appropriate disclosures. Some of the images are reproduced below:







4.37. The ubiquitous marketing campaign of the Respondent on busy locations such as, the banner placed on the Jinnah Avenue (Islamabad) flyover bridge with the words “WE ARE 4G” printed on it; various shop hoardings on Murree Road (Rawalpindi), F-8 Markaz (Islamabad), Warsak Road (Peshawar), etc.; and a large billboard on a prominent location such as Ammar Chowk (Rawalpindi), marketing its 4G devices with taglines such as “Sacha saath, jo *harr jagha nibhaaya jaaye-telenor 4G*”; all without appropriate disclosures pertinent to limited coverage of the Respondent along with a widespread deceptive marketing campaign on television amounts to distribution of false and misleading information to consumers lacking a reasonable basis, related to suitability for use and properties of its 4G services by the Respondent. Therefore, it can be concluded that the Respondent has been *prima facie* involved in violation of Section 10 of the Act.

c) The Respondent’s Official Twitter Account

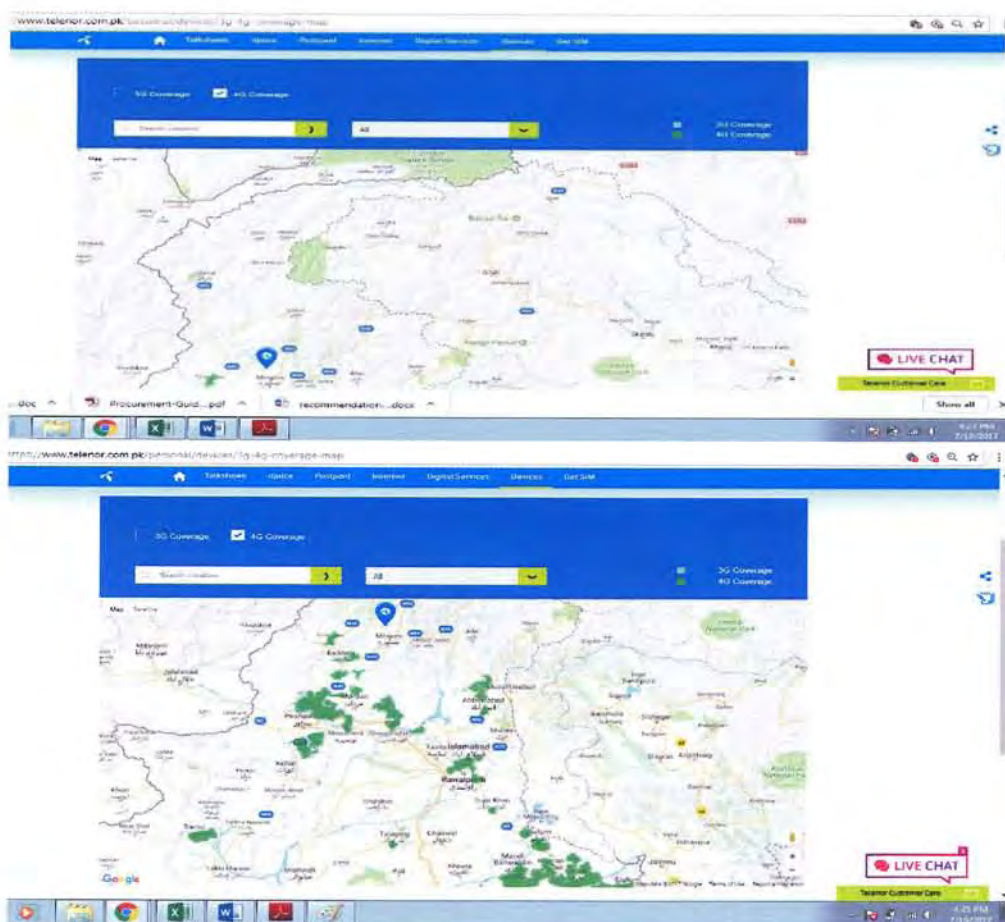
4.38. The submissions made by the Complainant regarding the Respondent’s official twitter account will now be analyzed. Various other marketing material found on this account by the Enquiry Committee has also been added.¹² Images of clips of video advert for KP are reproduced below:



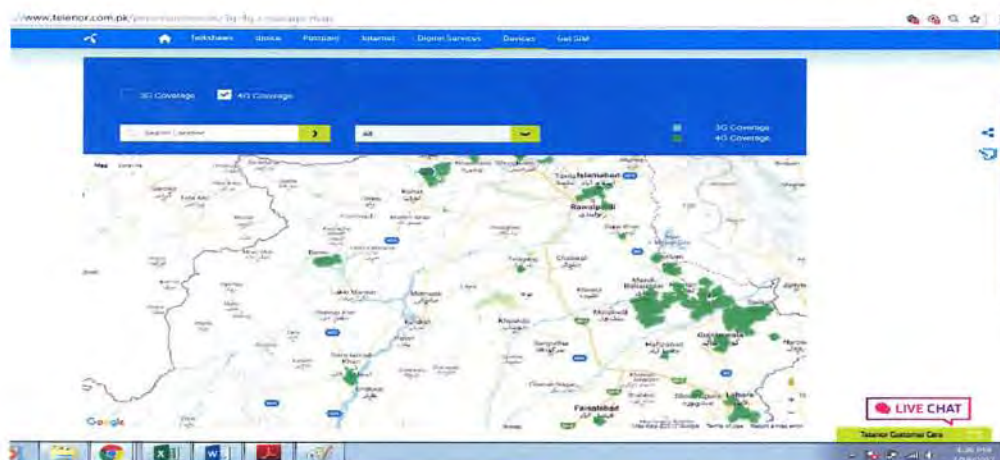
¹² <https://twitter.com/telenorpakistan>



4.39. The various video adverts referenced had tag lines such as, “*Unleash your limitless potential as you embark on a journey across KP with Telenor 4G!*”, along with visuals showing a view of mountains (in KP), which are highly misleading statements and inferences. Similar video adverts were made for Balochistan. The coverage map of KP is provided below:



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Telenor 4G Coverage Map for KP (Area Shaded Dark Green)

The green area displays the highly limited 4G coverage of the Respondent in the province of KP.

4.40. The video adverts also end with the statement, “*telenor ka tez tareen 4G, ab aap kay sheher main*”, with a written list of cities on the screen, “*Karachi, Lahore, Islamabad, Peshawar, Quetta, Multan, Faisalabad*”. The relevant clips have also been annexed and displayed above.

4.41. The video adverts as a whole give a very deceptive impression that the Respondent’s 4G services are available province wide, even in far-flung areas. As mentioned earlier, the message conveyed by the visuals and the vocals, “*telenor ka tez tareen 4G, ab aap kay sheher main*”, are likely to have more impact than the apparent clarification provided by the incomplete disclosure giving the list of cities. Moreover, other digital adverts pertinent to Respondent’s mobile devices also has the message, “*Sacha saath, jo harr jagha nibhaaya jaaye-telenor 4G*”, which further strengthens the deceptive impression made by the overall marketing campaign of the Respondent that its 4G services are available nationwide, contrary to the actual facts.

d) The Respondent’s Official Facebook Page

4.42. The submissions made by the Complainant regarding the Respondent’s official Facebook page will now be analyzed. Various other posts on the Respondent’s Facebook page which were discovered during the process of this enquiry have also been analyzed. Some of the images are displayed below:

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ANNEX C/2



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4.43. It can be observed that the various digital adverts marketing the Respondent's 4G devices have the tagline, "*Sacha saath, jo harr jagha nibhaaya jaaye-telenor 4G*". Moreover, other posts pertinent to its 4G services that were discovered by the Enquiry Committee and provided above have statements such as,

- "*Har jagah apno ka saath*"- Companionship of loved ones everywhere
- "*Jadeed network ka saath*"- Companionship of latest technology
- "*Taiz internet ka saath*"- Companionship of fast internet

4.44. All such statements campaigning about high quality 4G services that are available everywhere are deceptive statements that are, *prima facie*, in violation of Section 10 of the Act as they lack a reasonable basis regarding the suitability for use and properties of Respondent's 4G services.

4.45. In addition to above submissions, as mentioned by the Respondent and acknowledged by the Complainant, the information regarding the limited coverage of the Respondent's 4G services is available on the Respondent's website in the 'Frequently Asked Questions' section and on its coverage maps. However, it needs to be recognized that the first interaction an ordinary consumer is most likely to have with any sellers marketing material is through the more commonly and pervasive marketing material that is very easily, and in most cases, involuntarily accessible, such as TVCs, billboards, banners, hoardings, etc.

4.46. Moreover, to prove deception, the actual occurrence of deception and consumer injury does not have to be proven. Even the 'likelihood' of deception and consumer injury due to false and misleading marketing material amounts to deceptive marketing practices

which is a violation of Section 10 of the Act. In this reference, it was held in Commission's order in the matter of Zong and Ufone¹³;

“What further needs to be appreciated is the fact that, for the purposes of deceptive marketing, actual deception need not be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency/potential to deceive and the capacity to mislead.”

4.47. Therefore, taking into account the overall marketing campaign of the Respondent, it can be concluded that the net general impression given by the marketing campaign was that the services were “*bilkul free!*”, i.e., absolutely free. As even though certain disclaimers were added afterwards, the fact that they were not present in the initial advertisements; that the added disclaimers were illegible; and that the disclaimers significantly altered the actual meaning of the main claim; all bring us to the conclusion that the advertisements were in fact false and misleading.

4.48. Similarly, a few inadequate disclaimers regarding the limited coverage of the Respondent's 4G services were insufficient to correct the strong and false impression given by the overall marketing campaign which consisted of numerous written and audio misleading statements, such as “*ab aap kay sheher main*”, “*Sacha saath, jo harr jagha nibhaaya jaaye-telenor 4G*”, “*har jagah apno ka saath*”, etc. Hence, due to distribution of false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, properties and suitability for use of its 4G services, the Respondent's conduct amounts to *prima facie* violation of Section 10 of the Act in general and Section 10(2)(b) in particular.

4.49. Furthermore, due to a highly competitive and sensitive market, this misinformation is capable of harming the business interest of the competing undertakings, including the Complainant's, in violation of Section 10 of the Act in general and Section 10(2)(a) in particular.

5. CONCLUSION AND RECOMMENDATIONS

5.1. Therefore, in light of the above discussion, the findings of this enquiry report establish that the conduct of the Respondent amounts to distribution of false and misleading information to consumers through “*distribution of false [and] misleading information*” regarding its 4G services which was “*lacking a reasonable basis*”; “*related to price*”, as a chargeable service was being marketed as a free giveaway; “*properties*” of the service in terms of its geographical availability as well as its price; and “*suitability for use*”

¹³ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

pertaining to the unavailability of its 4G services for customers' use in *prima facie* violation of Section 10 (1), read with sub-Section 2, clause (b), of the Act.

- 5.2. Moreover, this conduct also has the ability to significantly damage the market share and goodwill of the competing undertakings who have invested an immense level of time, energy and capital into maximizing the coverage and improving the quality of their 4G services. Hence, this behavior further amounts to "*distribution of false and misleading information to consumers that is capable of harming business interests of another undertaking*" such as the Complainant, in *prima facie* violation of Section 10 (1), read with sub-Section 2, clause (a), of the Act.
- 5.3. Therefore, it is recommended that in the interest of the public at large, proceedings may be initiated against M/s Telenor Pakistan (Pvt.) Limited, under provisions of Section 30 of the Act, in accordance with law, for *prima facie* violation of Section 10 of the Act.



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