

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED AGAINST INTERNET
SERVICE PROVIDERS FOR DECEPTIVE MARKETING PRACTICES**

BY

Noman Laiq & Resham Ibrahim

Dated: APRIL 4, 2014

A. BACKGROUND

1. This report concludes the enquiry initiated by the Competition Commission of Pakistan (the ‘Commission’) under Section 37(2) of the Competition Act, 2010 (the ‘Act’) pursuant to complaint filed under Section 37 (2) of the Competition Act 2010, (the “**Act**”) with the Competition Commission of Pakistan (the “**Commission**”) by Mr. Nassar Lone (hereinafter referred to as the “**Complainant**”) against the Internet Service Provider (ISP) M/s Wi-Tribe for alleged violation of Section 10(2) (a) and (b) of the Act.
2. The Complainant alleged that Wi-Tribe (the “**Respondent**”) has advertised its internet packages as “unlimited” while there are actual limits on downloading volume. Hence the advertisement of the internet packages is misleading for consumers
3. While examining the advertisements of other major Internet Service Providers (ISP’s) it has been observed that they are also marketing their internet packages as “unlimited”. At the outset, it is unclear whether unlimited packages actually imply unlimited download volume at the given speed that is advertised.
4. Keeping in view the above, the Competent Authority after the primary analysis has initiated an enquiry pursuant to Section 37 (2) of the Act read with regulation 17 (2) of the Competition Commission (General Enforcement) Regulations, 2007 (the “General Enforcement Regulations”) for alleged violation of Section 10 of the Act by Internet Service Provider, namely Pakistan Telecommunication Company Limited, Wateen, Qubee, Nayatel, Micronet, Comsats, Nexlinx and Cybernet (hereinafter referred to as the “**Internet Service Providers**”)
5. The Commission exercising its powers under Section 28 (2) of the Act, appointed Mr. Noman Laiq, Joint Director (OFT) and Ms. Resham Ibrahim, Junior Executive Officer (OFT) as members of the enquiry committee (the “Committee”) to investigate whether
 - (a) Internet Service Providers are advertising their internet packages as “unlimited” and
 - (b) The packages have downloading/speed limits, constituting to deceptive marketing; thereby violating the provisions of the Act.
6. The mandate of the enquiry is to determine whether the undertaking has violated Section 10 of the Act. In view of the initial evidence, the enquiry has been focused on following three issues.
 - (i) Whether the conduct of the Internet Service Providers is capable of harming the business interest of another undertaking in violation of Section 10(2) (a) of the Act?
 - (ii) Whether the Internet Service Providers are disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties or quality of goods in violation of Section 10(2)(b) of the Act?

B. COMPLAINT AND COMMENTS

7. The Complainant, Mr. Nasser Lone made a complaint via e-mail. The major assertions made in the complaint regarding the advertisements of Wi-tribe are as follows.
- I. On receiving a leaflet at Wi-Tribe’s Customer Care centre, the complainant enquired about the internet package that was titled “Unlimited Packages” asking a Wi-Tribe representative whether the “1 Mbps” package had a volume limit. The representative informed the complainant that there was a 30GB download limit for this package.
 - II. The complainant further questioned why the package is titled as “unlimited” when there is an actual download limit of 30 GB on it. The representative claimed that the term “unlimited” is used to attract customers, however once they are informed verbally about the limit. The representative also claimed that Wi-Tribe’s competitors advertise their packages as “unlimited” also; hence it is common market practice.
 - III. The complainant submitted that in claiming “unlimited” internet in the advertisement, Wi-Tribe confuses the consumers and the use of such claims is misleading.
 - IV. It has been further alleged in the complaint that if it is a common industry practice to use the term “unlimited” to describe internet packages, it may be a kind of collusion between major players of the internet industry. If so, then the violation applies to all such ISPs.

C. INTERNET INDUSTRY IN PAKISTAN

8. The internet industry in Pakistan is growing rapidly with a staggering annual growth rate of 16% as compared to 7.5% in India and 12.5% in Sri Lanka. According to a recent survey by the Express Tribune, the total number of internet users in Pakistan has hit 30 million in 2013.¹
9. The following table shows the statistics of the Internet industry in Pakistan:

Internet Users	~30 million
Mobile Internet Users	15 million
Broadband Internet Connections	1.7 million
Cost of 2Mb IP Backbone Connection	US \$ 400 (per month)
Internet Bandwidth to Pakistan	~130, 000 Mb (combined PTCL and TWA)
Operational ISPs	~50
ISPs providing DSL service	10

¹ <http://tribune.com.pk/story/591004/pakistan-internet-use-survey-2013/>

HFC Operators providing broadband internet over cable	5
Undersea cables connecting Pakistan to the rest of the world	3 (with PTCL) and 1 (with TWA)
Domestic Fiber Backbones	Wateen, Mobilink, Multinet
Fiber To The Home (FTTH) providers	Nayatel

Source: Internet Service Providers Association Pakistan (ISPAK)

10. At the analysis stage, the Enquiry Committee decided to not only analyze the submissions of the Respondent but also probe the advertisements of other ISPs to determine whether other market players are also involved in deceptive marketing practices in terms of internet advertisement.

11. The following major ISPs other than Wi-Tribe were identified:

- (a) PTCL
- (b) Wateen
- (c) Qubee
- (d) Nayatel
- (e) Micronet
- (f) Comsats
- (g) Nexlinx
- (h) Cybernet

12. **PTCL:** Pakistan Telecommunication Company Limited (PTCL) is a mega corporation and an infrastructure despite arrival of a dozen other telecommunication corporations, including Telenor Corps and China Mobile Ltd. The corporation manages and operates approximately 2000 telephone exchanges across the country, providing the largest fixed line network. Data and backbone services such as GSM, CDMA, Broadband Internet, IPTV, wholesale are an increasing part of its business.

Originally one of the state-owned corporations, the share holding of the PTCL has been reduced to approximately 62%, when 26% of shares and control was sold to Etisalat Telecommunications and the remaining 12% to the general public in 2006 under an intensified privatization program of Prime Minister Shaukat Aziz. However, 62% shares are still remain under the management of the Government.

In the Internet segment, PTCL provides fixed broadband through conventional copper wire & FTTC (Fibre To The Curb) and wireless broadband based on EvDO Rev A and B technology with the brand name of EVO.

13. **WATEEN:** a converged communication services provider that fulfills connectivity requirements for organizations and individuals in Pakistan. An Abu Dhabi Group venture, Wateen began its operations in Pakistan in 2007, with the deployment of the largest fiber optic network in the country. Its associate companies include Bank Alfalah, Warid Telecom and Al-Razi Healthcare. Wateen currently services over 250,000 WiMAX subscribers, provides enterprise solutions and data services to over 200 leading organizations and its

wired (HFC/GPON) network reaches over 15,000 households in Lahore and Multan along with 23 other cities across Pakistan.

14. **QUBEE:** the customer facing brand of Augere, the wireless broadband business founded in 2007 by the former CEO of Orange, Sanjiv Ahuja. Qubee has so far been launched in Pakistan in July 2009 and in Bangladesh in October 2009. Augere is also expecting to launch Qubee in Uganda in 2010 and is continuing to pursue spectrum across Africa, Asia and South East Asia. Qubee offers the latest internet technology; WiMAX with a strong network of transmitters and offers internet services in Karachi, Lahore, Rawalpindi and Islamabad.
15. **NAYATEL:** a “Fiber To The Home” (FTTH) services provider based in Islamabad and is a sister concern of Micronet Broadband. The company launched FTTH network in September 2006 making it the first one to do so in South Asia. The Triple play (telecommunications) services i.e. Cable TV, Telephony, and Broadband Internet offered by NayaTel are limited to the twin cities, Islamabad and Rawalpindi. The company is also the first to launch High Definition Channels under their Cable TV services.
16. **MICRONET BROADBAND:** constitutes of the following companies:
 1. Micronet Broadband (Pvt.) Ltd. And
 2. Nayatel (Pvt.) Ltd.

Inspired by the broadband revolution of 21st century in the developed part of the world, the founding team of Micronet, a then dialup ISP setup, conceived the idea of broadband Internet services for Pakistan. They had put efforts of two years in convincing and competitive bidding by the state-owned fixed line incumbent, PTCL in order to open up its copper loop for DSL services. Micronet offers variety of bandwidth and service packages. Micronet has designed DSL packages to suit most organizations and individuals in Pakistan since 2002. Micronet offers connectivity from 64 Kbps to 2 Mbps on its various pre-paid and post-paid packages with the option for availing Value Added Services (VAS) like Video Conferencing, Multiplayer gaming, Web Hosting, Email Hosting/Security, LAN/WAN setup and configuration etc. at customer’s premises, which are billed separately. Micronet is an undertaking in terms of Section 2 (1) (q) of the Act.

17. **COMSATS:** It was in the year 1996 when COMSATS launched its ISP services under the name of COMSATS Internet Services thus becoming the pioneer ISP of Pakistan. COMSATS is an International, Inter-Governmental Science Organization, aiming at socio-economic uplift of the third world through useful applications of science and technology. COMSATS has launched many successful projects which include the most reputed COMSATS Institute of Information Technology (CIIT) and COMSATS Internet Services (CIS). Since its inception CIS has been growing and opening up branches in almost all major cities of Pakistan namely Islamabad, Lahore, Karachi, Peshawar, Sialkot, Faisalabad and Multan (inaugurated in 2011). CIS is the most diversified ISP of Pakistan offering services like Wireless broadband, Domain & web hosting, On-demand broadband, Video conferencing, Website designing and development, Search Engine Optimization, Virtual Private Servers, Networking and IT training courses. A state-of-the art training center is established for conducting training at Islamabad. The training courses include CCNA, ITIL

V3 Foundation, Microsoft Office, Web development to name a few. CIS was also a Cisco training partner back in 2000.

18. **NEXLINX:** Nexlinx is a data network / internet service provider, currently serving the clients in Pakistan. The services range from Simple Dial-up connectivity to Extensive Wireless Networks which allow access to the internet. It provides internet based communications and can provide Dialup, ISDN, DSL as well as Wireless Broadband access solutions. Nexlinx is an undertaking in terms of Section 2 (1) (q) of the Act.
19. **CYBERNET:** CyberNet, a subsidiary of Lakson Group of Companies, one of Pakistan's largest and diversified business groups, launched its services commercially in March 1997 from the city of Karachi and later extended its operations to Lahore. Although, there are more than 60 ISPs operating in Pakistan, but the company has become the country's number one Internet service provider due to its foresighted policies and managerial skills. For a company geared towards constant growth and faced with continual challenges, it is essential for it to be backed by a strong team of dedicated professionals. Cyber.Net is proud to have such competent members who are capable of directing the course of the company to newer heights of success.

D. ANALYSIS & FINDINGS

20. On observing the advertisements and leaflets/brochures of each ISP, the Committee found that all ISPs did use the term “unlimited” to describe their internet packages. However, each company’s advertisement was unique in its own way and therefore the Committee agreed to call each ISP for a meeting separately. The aim of the meetings was to give the companies a chance to substantiate/justify their respective claims.
21. Since the enquiry officers wanted to gather as much information as possible, letters were sent to PTCL Evo, Wateen, Qubee, Nayatel, Micronet, Comsats, Nexlinx and Cybernet. These letters were sent to inform each ISP about the matter and required them to send general information regarding the nature of the internet service they provided. Information regarding parameters such as speed and volume were enquired about
22. The advertisements of the ISPs, prima face, violates section 10 (1) and (2)(a) & (b) of the Act by not providing appropriate disclosure for the speed of different internet packages offered by them. Relevant portion of Section 10 of Act has been reproduced below for ease of reference.

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

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

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

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

A. IN THE MATTER OF WI-TRIBE

23. Six distinct packages are displayed on the promotional material of Wi-Tribe. Each package’s has it own respective price, speed and downloading volume.
24. An image of Wi-Tribe’s promotional material is depicted below:

Basic Package			
Package	Speed	Volume	Price (Rs.)
Basic	1 Mbps	12 GB	1,099 <small>New</small>

Unlimited Packages			
UNLIMITED*	512Kbps	Unlimited	1,099
	1 Mbps	Unlimited	1,399
	2 Mbps	Unlimited	1,999

*Fair usage policy applies

Customized Packages		
STUDENT*	Student Hours: 12 am - 6 pm (midnight) Regular Hours: 6 pm - 12 am	1,199
FAMILY*	Unlimited: round the clock now with 1.5 Mbps	1,599 <small>New</small>

25. The term “unlimited” corresponds to the term “fair usage policy applies” (FUP) appearing on the right side of the advertisement. The terms and conditions of this policy are not disclosed on the advertisement itself. The details of the policy are found on the website.

A meeting was held with the representatives of Wi-Tribe to substantiate the claims of their advertisement. It was submitted by Wi-Tribe that their FUP explains that volume is indeed unlimited, however speed varies. This depends on the number of users downloading data at different times of the day because the bandwidth is shared. Each user does not have his/her own bandwidth. If this were the case, the user would be able to download data at a constant speed which remain constant through the day. However, since the bandwidth is shared, speed varies and cannot remain constant.

26. Enquiry Committee is of the view that there is a general unawareness amongst consumers regarding the FUP and what it entails and therefore it is important that disclosure regarding speed is made on the advertisement itself. This is because the aim is to provide as much information to the consumer as possible so a clear and informed decision is made.
27. The complaint received by the Commission was sent to Wi-Tribe for its comments/reply and Wi-Tribe made the following submissions:
28. The allegation put forward by the complainant is untrue and the unlimited packages offered by Wi-Tribe are actually unlimited.
29. Wi-Tribe applies a Fair Usage Policy (FUP), which is a global practice followed in order to ensure quality of service for the entire customer base. ISPs commonly apply the policy when a channel intended to be shared by many users becomes overloaded, or to avoid abusive data volume consumption. The objective of the FUP, as the name implies, is to safeguard experience of the majority of the customers. Accordingly, upon reaching a certain generous volume, a reduction in speed of the download is applied to regulate/manage the network usage
30. For the 512Kbps and 1Mbps package, the reduction of speed is applied upon reaching the volume of 30GB. For the 2Mbps package, the speed is reduced upon reaching the volume of 40 GB. Internet access is not blocked nor is any restriction placed on the volume, the customer can continue with unlimited download. No additional charges are applied for the continued download. However if the customer requires the same speed of download, they may subscribe to an “Up-size Add on”. Customers are informed of this “change of speed” as an asterisk appears next to the term “unlimited” on the advertisement. The asterisk refers to the FUP which is published on Wi-Tribe’s website.

B. IN THE MATTER OF PTCL EVO

31. In the matter of PTCL EVO, the following packages were found on its website:

EVO Packages

Packages	Monthly Charges	Volume	Additional Usage / Mb
EVO DayPass 3GB	Rs. 200/2days	3GB*	-
EVO GO 5GB	Rs. 899	5 GB	Rs.0.10/Mb
EVO LITE 30GB	Rs. 1200	30 GB	Rs.0.10/Mb
EVO Max	Rs. 2100	Unlimited** FUP Applies	Rs.0.1/Mb
EVO 256Kbps Prepaid	Rs. 1200	Unlimited	-

**FUP 3GB applies within 2 days usage. **FUP of 100GB applies.*

EVO 3.1Mbps Postpay

EVO Package	Monthly Charges	Billing Mode	Download Limit
EVO Postpaid Unlimited	Rs. 2,100	PTCL Landline Billing Advance Billing	Unlimited

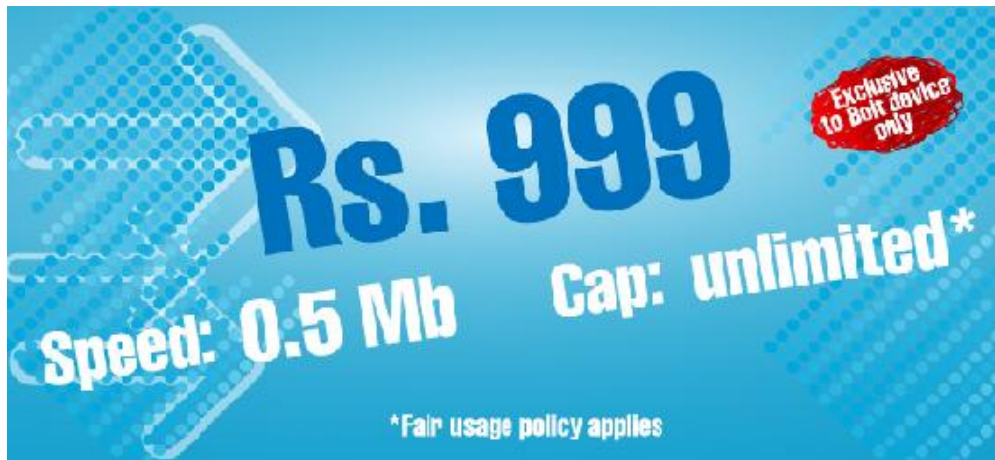
EVO 256Kbps Packages

Billing Options	Monthly	
PTCL Landline Billing	Rs.1199	Billed in PTCL Landline bill
Advance Line Rental package	Rs.1199	Advance payment at PTCL OSS, designated bank or using any smart recharge method.

32. A perusal of PTCL’s packages indicates that firstly, they also apply a FUP on their packages; however, their website does not provide any additional information which clarifies the exact terms and conditions that they implement in their policy. Secondly, they have advertised their packages with distinct speeds i.e “EVO DayPass 3GB”, “Evo GO 5GB” etc, however there is no disclosure to the consumer that confirms that the speed will remain the same throughout, or whether it will change. Hence the advertisement potentially may mislead consumers.
33. PTCL was asked to present their view in order to substantiate the claims made in their advertisement and were asked to meet the Committee at the CCP office. Through a telephonic conversation, PTCL requested that the meeting be postponed for 2 weeks in order for them to prepare for the meeting. An extension of 2 weeks was granted to PTCL. However, subsequently, many reminders were sent to PTCL to which they failed to respond, hence the Committee was unable to conduct a meeting with PTCL.

C. IN THE MATTER OF WATEEN TELECOM

34. In the matter of Wateen Telecom, four distinct internet packages were advertised on the website. Each package has a different price, speed and download limit. The term “cap” is used when referring to download limit and in the advertisement, the cap is described as “unlimited”. This gives the impression that download is unlimited at the given speed. Also, a Fair Usage Policy is applied to Wateen’s internet packages. An image of Wateen’s internet packages is depicted below:



35. The advertisement is prima facie misleading for consumers because primarily, downloading is assumed to be unlimited at the given speed that is advertised. There is no disclosure in terms of speed changes. The disclosure of Fair Usage Policy is inadequate because there is ambiguity in the statement since not all consumers will be aware of what exactly this policy entails.
36. Representatives from Wateen Telecom were called for a meeting and were given a chance to substantiate the claims made in their advertisement. It was confirmed by Mr. Amer Salam, (Head of Regulatory Affairs) that, downloading limit is indeed unlimited, however, speed varies depending on the number of users using the internet service. On enquiring about the terms and conditions of Wateen’s Fair Usage Policy, it was submitted that the policy was still at development stage and that it has not been completed yet.
37. Wateen was directed to remove the term “Fair Usage Policy applies” from all its adverts since this is a direct violation of Section 10 (2)(b) of the Act which prohibits the distribution of false and misleading information to consumers. Moreover, the fact that speed does not remain constant was also a matter of concern.
38. It was concluded that disclosure with regard to speed changes was mandatory on the advertisement so that consumers are aware of speed changes.

D. IN THE MATTER OF QUBEE

39. In the matter of Qubee, four internet packages are advertised on their website which are titled as “Unlimited”. Each package has a specific speed, line rent and activation charges. There is no description in terms of downloading volume. An image of the advertisement is depicted below:

*Fair Usage Policy applies

UNLIMITED	SPEED	LINE RENT	ACTIVATION
Discover Max	512 Kbps	Rs. 1000	Rs. 750
Explore Max	1 Mbps	Rs. 1500	Rs. 500 FREE!
Venture Max	1.5 Mbps	Rs. 1800	Rs. 500
Conquer Max	2 Mbps	Rs. 2500	Rs. 500

DEAL OF THE MONTH

Buy Explore Max Now with Zero Activation Charges and save Rs. 500!

24/7 Unlimited Internet*

40. The term “24/7 Unlimited Internet” appearing at the bottom of the advertisement corresponds to the term “Fair Usage Policy applies” and the top left corner of the advertisement. Similar to Wateen’s case, disclosing the fact that a Fair Usage Policy applies is insufficient since consumers are unaware of what the terms and conditions of the policy are. However, Qubee does have its Fair Usage Policy in place which can be found on its website under the FAQ section.
41. The Financial Controller and the Legal Counsel of Qubee met with the Enquiry Committee to discuss the matter. It was submitted that download volume is unlimited however; speed varies depending on the number of users using the internet service. It was further submitted by Qubee’s representatives that the Fair Usage Policy explains the fact that speed varies after a certain download limit has reached.
42. On analyzing the submissions made by Qubee and the advertisement itself, the Committee concluded that disclosure in terms of speed changes need to be depicted on the advertisement. A majority of customers may make an impulsive decision based on the claims and information provided on the advertisement only. Customers may not read the terms and conditions of the Fair Usage Policy which is on the website only, hence it is essential that disclosure regarding speed is visible on the advertisement of the said internet packages.

E. IN THE MATTER OF NAYATEL

43. In the matter of Nayatel, six distinct packages are advertised on their leaflet, each having different speeds, prices and downloading volume. An image of the leaflet is depicted below:

Upgraded Internet Home Packages
Bigger volume
Same Cost!

Cost of PKR 10/- applies on additional 100 MB downloads.
All above mentioned packages are with dynamic IP only.

Package	Speed	Price
Home 15 20 GB @ 1 Mbps Unlimited Downloads @ 3 Mbps	1 Mbps 3 Mbps	1,199/-
Home 20 GB Plus @ 1 Mbps Unlimited Downloads @ 1 Mbps	1 Mbps 1 Mbps	1,199/-
Home 18 25 GB @ 1 Mbps Unlimited Downloads @ 3 Mbps	1 Mbps 3 Mbps	1,399/-
Home 18 25 GB Plus @ 1 Mbps Unlimited Downloads @ 5 Mbps	1 Mbps 5 Mbps	1,699/-
Home 18 25 GB Ultra @ 1 Mbps Unlimited Downloads @ 5 Mbps	1 Mbps 5 Mbps	1,899/-
Home 20 25 GB Mega @ 1 Mbps Unlimited Downloads @ 7 Mbps	1 Mbps 7 Mbps	2,999/-

Day Time: 8:00 a.m. to 8:00 p.m. → Night Time: 8:00 p.m. to 8:00 a.m. & Sundays
Day Time: 9:00 a.m. to 7:00 p.m. → Night Time: 7:00 p.m. to 9:00 a.m. & Sundays

UAN: 111 11 44 44 www.nayatel.com

44. On analyzing Nayatel’s leaflet, it was observed by the Committee that all parameters i.e speed, volume and price are depicted clearly. The term “unlimited” is only used for night hours and a different speed is given for that time. Hence it is clear that customers will only have unlimited volume at night, however disclosure regarding speed does not appear on the advert.
45. A meeting was called with Nayatel to gather more information. It was submitted by the Nayatel’s representative that for day time internet services, a download limit is given, however, night time downloading is actually unlimited and night time speed is distinct from that of day time. Therefore it is imperative to make disclosures regarding speed changes on the internet package advertisements.

F. IN THE MATTER OF MICRONET, COMSATS, NEXLINX and CYBERNET

46. In the matter of Micronet, Comsats, Nexlinx and Cybernet it was acknowledged by the Committee that these ISPs are much smaller in size as compared to the ones mentioned above as their customer base is small. These ISPs are dependent on the fibre laid out by PTCL and pay rent to PTCL for its fiber lines. Micronet, Comsats, Nexlinx and Cybernet all use the term “unlimited” in their adverts however, after meeting with each ISP it was confirmed that the term unlimited only refers to downloading volume which indeed is unlimited. Speed does vary depending on the number of users. The Enquiry Committee asked Micronet, Comsats, Nexlinx and Cybernet to qualify their advertisement just to make consumers aware of the fact that speed does vary.
47. *Comsats being the first to comply agreed to the terms put forward by the Committee and submitted an undertaking. It has been noted by the Committee that the changes have been made and are apparent on Comsats’ website.*

E. PRACTICE FOLLOWED IN OTHER JURISDICTIONS

48. While investigating each case, the Enquiry Committee examined international practices in other jurisdictions. The internet advertisements were closely examined and it was found that both UK and USA were confronted with similar challenges. The use of the term “unlimited” resulted in consumer confusion and misguidance. Consequently, the telecom regulator in UK, “Ofcom” produced guidelines specifically for internet advertisements which are to be followed by ISPs:

“In relation to the use of speeds in broadband advertising, we recommend the following:

- A Typical Speed Range (TSR) representing the range of speeds actually achieved by half of customers should be used when advertising broadband on the basis of speeds.
- If a maximum ‘up to’ speed is used in an advertisement, then the TSR must have at least equal prominence. Furthermore, the theoretical maximum ‘up to’ speed stated must be a speed actually achievable by a material number of customers.
- Advertisers should include a qualification alerting consumers to the fact that they can confirm the likely speed that they will receive at the point of sale, and must also explain in the body copy that actual speeds depend on line quality and distance from the exchange.
- Any reference to broadband speed in advertising (for example words such as “fast”, “superfast”, “lightning”, etc) must be accompanied by a TSR, which should have at least equal prominence to these words.
- ISPs must be able to substantiate speed claims made by providing robust data which is representative of the actual average speeds its customers receive.

In relation to the use of the term “unlimited” in broadband advertising, we recommend the following:

- The use of the term unlimited is only permitted where the service in question has no usage caps through a ‘fair usage policy’ or similar.²

Ofcom believes that with the emerging broadband industry, companies should avoid using imprecise terms regarding speed or volume since it is vital that consumers are able to make an informed decision.”

49. Similarly in the United States, the Federal Communications Commission (FCC) penalized a service provider known as “MCIWorldcom” for its deceptive marketing practices. A Consent Decree was adopted between the FCC and MCIWorldcom in which the service provider agreed to advertise its services according to the terms put forward by the Commission. Specifically, MCIWorldcom was required to substantiate its “explicit and implied statements” for prominent disclosure.³

² <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/bbspeeds2011/response-to-asa.pdf>

³ http://transition.fcc.gov/eb/News_Releases/ebmci.html

F. CONCLUSION & RECOMMENDATIONS

50. Based on the information available on record and the submissions made during the enquiry through correspondence before us, we the undersigned enquiry officers have concluded that the Respondent has no reasonable basis to make the claim of '*unlimited Package*'. However all ISPs were provided the sufficient time period to remove the claim.
51. It is evident that Internet Service Providers, by making the claim of being '*unlimited Package*' are prima facie, involved deceptive marketing practices in terms of Section 10 (1) of the Act. Furthermore, they are, prima facie, distributing false and misleading information that is capable of harming the business interest of other undertakings in terms of Section 10 (2) (a). Moreover, distributing information to consumers that lacks reasonable basis regarding character, properties and quality of its product in terms of Section 10 (2) (b) of the Act.
52. Deceptive marketing practices have a direct impact on the public at large. The undertakings should disclose correct information regarding their product to the consumers. False and misleading advertisements induce the consumers to purchase the product and hence it gives the undertaking a competitive edge over other competing undertakings. Consequently it is in the interest of the public that undertakings should avoid advertising their products in a deceptive manner and be encouraged to resort to advertising practices that are transparent and give consumers/customers true and correct information about the products, rather than making misleading and false claims. Prima facie violations under the Act in terms of the findings of this enquiry report warrant initiation of proceedings against Internet Service Providers, under Section 30 of the Act.

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