

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 DIAMOND PAINT
INDUSTRIES (PVT.) LIMITED AGAINST M/S. AKZONOBEL PAKISTAN
LIMITED**

**FOR
DECEPTIVE MARKETING PRACTICES**

BY

 
USMAN AHMED & RIAZ HUSSAIN

DATED: SEPTEMBER 27, 2021

1. BACKGROUND:

- 1.1 M/s Diamond Paint Industries (Pvt.) Limited (the “**Complainant**”), filed a complaint against M/s Akzo Nobel Pakistan Limited (the “**Respondent**”) with the Competition Commission of Pakistan (the “**Commission**”) for alleged violation of Section 10 of the Competition Act, 2010 (the “**Act**”), about deceptive marketing practices.
- 1.2 It has been alleged in the complaint that the Respondent has advertised so-called warranty without any policy in that regard or providing warranty document to the consumers and/or information concerning procedures to claim warranty, which is not only deceptive for the consumers but is also likely to cause harm to the Complainant as well as other competitors which amounts to, *prima facie*, violation of Section 10(2) (a) & (b) of the Act.
- 1.3 After attaining the preliminary facts, the Competent Authority initiated an enquiry in accordance with subsection (2) of Section 37 of the Act by appointing Mr. Usman Ahmed, Deputy Director (OFT) and Mr. Riaz Hussain, Assistant Director (OFT) as enquiry officers (collectively the “**Enquiry Committee**”) to conclude the enquiry. The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint, and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following:
- i. *Whether the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, properties, suitability for use, and quality of goods in, prima facie, violation of Section 10(1) in general and in particular, Section 10(2) (b) of the Act.*
 - ii. *Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in, prima facie, violation of Section 10(2)(a) of the Act?*
 - iii. *Whether there is a spillover effect of the conduct of the Respondents?*

2. THE COMPLAINT:

- 2.1 The Complainant in its complaint to the Commission has made the following submissions. The Complainant is a private limited company registered under the Companies Ordinance, 1984, and engaged in manufacturing high quality decorative and industrial paints in Pakistan and abroad by utilizing modern machinery and innovative processes. Therefore, it is an ‘undertaking’, as defined under clause (q) of sub-section (1) of section (2) of the Act. The term undertaking, under the Act¹, is defined as:

“undertaking means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other

¹ https://cc.gov.pk/index.php?option=com_content&view=article&id=60&Itemid=110&lang=en

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entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings;"

- 2.2 It was alleged in the complaint that the Respondent is engaged in anticompetitive practice(s) prohibited by the Act. Specifically, the Respondent is engaged in deceptive marketing practices by issuing misleading advertisement. The Respondent has advertised and issued a so-called warranty without any policy in that regard or providing warranty document to consumers and/or information concerning procedure to claim warranty. This practice is deceptive for the consumers, and has the potential to harm business interest of Complainant as well as other competing undertakings.
- 2.3 The Complainant has submitted that the Respondent has claimed to provide a six year warranty for one of its paint product, i.e., Weather Shield without there being any codified policy and/or providing the requisite information to the consumers regarding warranty claims. The Complainant submitted that this is a serious claim, and the Commission considers false claims to gain competitive advantage as deceptive per se, which harm the interests of other market players. The warranty claim has been mentioned by the Respondent on the packaging material and also on shade cards (providing colour range to choose from).
- 2.4 The Complainant further alleged that the claim of warranty is not backed by any information available to the public/consumers/other market players, i.e. as to how the Respondent claims to allow consumers to claim warranties. The terms and conditions of such a so called warranty also remain hidden in mystery yet the claims of warranty are published and advertised with great fanfare to advance the Respondent's commercial interests and lend it an unfair competitive advantage. Such a strategy is clearly deceptive. The Complainant submitted that such warranty in question leaves an impression on the ordinary consumer that the Respondent is manufacturing the best quality product, and it will convince the ordinary consumers to buy Respondent's product. However, there is no written policy, which can bind the Respondent. Therefore, if something goes wrong and the consumers come forward to claim the warranty, then they would be dodged.
- 2.5 The Complainant also highlighted that as opposed to Pakistani market, the Respondent has a proper codified/written policy for warranty claims of its products, i.e., ICI Dulux Weather Shield, which the Respondent is selling and advertising in the United Kingdom. Under the aforementioned policy/representation all terms and conditions of warranty have been specified in detail i.e. as to how the consumer shall use the product of the Respondent and how warranty could be claimed. Moreover, complete record of the buyer/consumers is maintained for the purpose of warranty claims, which is not the case in Pakistan. This also substantiates that the Respondent does have the knowledge that there shall be a detailed policy for the warranty claims as required under anti-trust and consumer protection laws worldwide

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but still did not follow the same in Pakistan. The reason being that the Respondent was under an impression that it can easily avoid liability before the Commission and other relevant authorities in Pakistan.

- 2.6 The Complainant also pointed out that in various jurisdictions including UK, India and Australia, the consumer protection laws protect consumers from such false warranties and representations by requiring the corporations to lay down the whole procedure. To claim warranties, the details are provided to the consumers with the product at the time of sales in a written form. Hence, relevant information is readily available for the consumers' assistance.
- 2.7 The Complainant further highlighted that under Regulation 90 of the Australian Competition and Consumer Regulations, 2010, it is a condition that the suppliers and manufacturers providing the warranties shall identify all documents that provides any warranty statements. This included all warranty cards, brochures and manuals, point of sale materials such as term and conditions and warranties displayed on any products.
- 2.8 The Respondent, by omitting such information and the marketing material, is not just deceiving an ordinary consumer but is also harming the competition in the market. The Complainant alleged that the actions of the Respondent constitute a violation of Section 10 (2) (a) & (b) of the Act.
- 2.9 The false warranty, claimed by the Respondent, does have a potential to mislead and/or convince the consumer into giving preference to the Respondent's product over its competitors, and will ultimately result in causing harm to the profits of the competitors. It is well settled that to prove conduct under Section 10(2) (a) of the Act, it is sufficient to show the existence of deceptive marketing practices that has a potential to cause harm to the competitors and no actual harm needs to be proved.
- 2.10 That the Respondent's concealment of terms and conditions of the warranty, and there being no policy concerning warranty claims is misleading. Incomplete information and/or non-disclosure of mandatory information amounts to deception, and is prohibited under Section 10(2) (b) of the Act. The Respondent has been disseminating half information, and concealed the rest that was relevant for the consumers in order to claim warranty, which is misleading and therefore, anticompetitive. It is well settled that it is sufficient to establish that the information or advertisement has the tendency and capacity to mislead and actual deception need not to be proven.

Prayers:

- 2.11 The Complainant respectfully prayed that:
 - a. That the proceedings against Respondent may kindly be initiated for violation of Section 10 of the Act, i.e., deceptive marketing practices;

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- b. The Commission may, in the interim, restrain the Respondent from advertising any such warranty;
- c. A heavy fine may kindly be imposed on the Respondent for such unfair trade practices;
- d. Any other relief deemed fit and appropriate by the Commission may also be granted.

3. SUBMISSIONS OF THE RESPONDENT:

3.1 The complaint was forwarded to the Respondent by the Enquiry Committee for comments on May 17, 2021. However, the Respondent, through its counsel, requested an extension till June 21, 2021, via email dated May 27, 2021. The extension was granted till June 11, 2021 through a letter dated June 01, 2021. The Respondent finally submitted its comments, through its authorized representatives Cornelius, Lane and Mufti, Advocates and Solicitors through letter dated nil, the contents of which are reproduced below.

Preliminary Submissions:

- 3.2 That the titled complaint is vexatious, frivolous, based on insufficient facts, not substantiated by *prima facie* evidence, motivated by mala fide and improper purpose and replete with incorrect statements and misstatements; hence is liable to be dismissed.
- 3.3 That the Respondent has denied the allegations of wrongdoing, infringement of law and/or acts of deceptive marketing practices in contravention of Section 10 (1) or (2) (a) & (b) of the Act. The Respondent further submitted that it has not participated in any practices, wherein it has distributed false or misleading information that is capable of harming the business interest of another undertaking, and/or distribution of false or misleading information to consumers, including the information lacking reasonable basis related to price, character, method or place of production, properties, suitability for use, or quality of goods.

That the Respondent has denied the allegations with regards to the false claim of warranty being provided by it on two of its products, i.e., Weather shield and Weather shield Power Flex without there being an actual framework for the said warranty. The Respondent submitted that it is a settled principle that an express warranty may take various forms and warranty about what a supplier or manufacturer will do if something goes wrong with a good or service can be a warranty against defects if it is not provided in a formal document.

- 3.4 That the Respondent has, since 2019, received and entertained hundreds of warranty claims and also have maintained complete record with regards to such complaints in its customer relationship management system, which is a globally recognized complaint management system. The Respondent has also categorically denied that it does not have any framework for the warranty being offered by it. Wherever, the Respondent has mentioned the warranty either on its product packaging and/or shade-card, the same has been mentioned with an Asterisk, which categorically states that "*terms and conditions apply*". The Respondent

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submitted that these terms and conditions are available for customers by communicating with it, including by calling its Toll Free help line (mentioned on shade-cards and packaging).

- 3.5 Moreover, when any customer requests, the written information on such terms and conditions, the same has been provided to them by the Respondent. The warranty policy has not only been communicated and shared with numerous customers but the warranty policy remains unchanged since 2017. In light of the above, it is abundantly clear that the warranty being offered by it, is genuine hence not a false claim. The Complainant can also provide a similar warranty to its customers, if it feels any harm to its business due to such warranty offered by the Respondent.
- 3.6 That the Complainant while discussing the various jurisdictions around the world, has itself admitted that within the Jurisdiction of Pakistan, no specific law mandates the Respondent to provide such written details of the warranty to its customers.

PARA-WISE COMMENTS TO THE COMPLAINT:

- 3.7 The Respondent has denied each and every adverse averment, statement, claim, contention, allegation or ground in the complaint. Further, his para wise reply on merits of the complaint are as follows:
- 3.8 That it has been categorically denied that the Respondent has engaged in any anticompetitive practices and/or that warranty being provided by it on two of its products is in any way deceptive and/or capable of harming the business interests of the Complainant.
- 3.9 That the allegation of false warranty claim and/or warranty without any policy or framework has categorically been denied, and in support of it the contents of para 3.6 above have been reiterated. Further, the information pertaining to warranty claim was communicated to the customers through various mediums and a number of warranty claims were also entertained.
- 3.10 That it has been admitted to the extent that its sister concern in the United Kingdom has specific warranty policy with respect to the same products. The Respondent has categorically denied that it did not follow any requirement of anti-trust and consumer protection laws in Pakistan. In fact, it has been submitted that different countries have different market conditions and regulatory frameworks, and the brands of the Respondent are run under different management in such different geographical locations. Therefore, the Respondent may have different policies within different geographical locations.
- 3.11 In response to para 2.6 *ibid*, the Respondent submitted that the Complainant is put to strict proof to provide the specific provisions of law dealing with such requirement to provide

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written specifications and representation of warranty in the United Kingdom and India under consumer protection and anti-trust laws. The Respondent submitted that it is unable to verify the contentions of the Complainant that *“even in Pakistan every company providing warranty for its products do follow such standard of operating and provide warranty cards with their products wherein the details regarding the warranty claims are specified for consumer’s assistance”*. Moreover, the Complainant has itself admitted that within the jurisdiction of Pakistan no specific law mandates the Respondent to provide further written details of the warranty.

3.12 In response to para 2.7 *ibid* the Respondent submitted that no such legislation exists in Pakistan and even otherwise, even the Australian Competition and Consumer Commission, Regulations itself states that:

“A warranty against defect is a representation communicated to a consumer that if the good or service (or part of them) are defective, the business will:

- *Repair or replace goods (or part of them)*
- *Supply of fix a problem with service (or part of them)*
- *Provide compensation to the consumer.*

A representation will only be a warranty against defects if it is made at or around the time that goods or services are supplied.

A promise about what you as a supplier or manufacturer will do if something goes wrong with a good or service can be a warranty against defects under the ACL even if it is not provided in a formal document.

Any material with writing on it could evidence a warranty against defects, for example wording on the packaging or on a label, if those words contain such a promise”

3.13 Therefore, in light of the aforementioned, it is abundantly clear that the warranty being offered by the Respondent is not only a valid warranty but as detailed earlier that the consumers had also availed such warranties. Through aforementioned regulation, Australia has added a further requirement that detail of such warranty to be in writing. However, this would not be relevant to the Respondent, as there exists no such legislation mandating the Respondent to provide such details of its warranty in writing to its customers in Pakistan.

3.14 The Respondent has vehemently denied the Complainant’s assertions that the Respondent *“neither have any written policy nor is it providing any written representation with its products concerning the warranty claim”*. The Respondent reiterated that wherever the Respondent has mentioned the warranty either on its product packaging or shade card the same is mentioned with Asterisk which categorically states that *“terms and conditions apply”*. These terms and conditions has been communicated to the consumers through toll free number

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given on packaging of the product and the same has been provided to them in a written form if someone requires the terms and conditions.

- 3.15 The Respondent accepted the grounds taken by the Complainant to the extent that the Commission had previously held that under Section 10(2) of the Act, it is sufficient to show the existence of deceptive marketing practices and no actual harm needs to be proved. However, it has categorically been denied that the warranty being offered by the Respondent is false and has the potential to mislead the consumers.
- 3.16 The Respondent once again denied the allegation that it does not have a written policy framework to deal with such warranties, and the Respondent does not provide any document and/or representation to the consumers and dodging them at the time of warranty claims. The Respondent also pointed out that the Complainant has not provided reference as to from where the definition of warranty against defect has been obtained.
- 3.17 The Respondent has denied the allegation that it had disseminated half information and concealed the rest, which was relevant to the consumers in order to claim warranty.
- 3.18 The Respondent submitted that it has rebutted in details all the factors for which the Complainant seeks the direction against the Respondent. The instant complaint is not maintainable with respect to Section 10 (2)(a) & (b) of the Act, and is liable to be dismissed. The Respondent also prayed that complaint, being devoid of any merit, may be dismissed with costs.

4. REJOINDER:

- 4.1 The Respondent's reply was forwarded to the Complainant for a rejoinder vide letter dated June 21, 2021. The Complainant vide letter dated June 24, 2021, requested for extension of 07 working days to submit rejoinder, which was duly granted through email dated July 06, 2021. The said rejoinder was received through a letter dated July 13, 2021, the contents of which are summarized below:
- 4.2 That the complaint is factually true and based on correct reading of the Act. The conduct of the Respondent was in contravention to the Act, specifically in terms of deceptive marketing practices by the Respondent. Advertisements were issued by the Respondent that omitted material information pertaining to the warranty claim present on the Weather Shield paint bucket. This, it is submitted, resulted in half-truths, which is not only deceptive for the consumers but it is also likely to cause harm to the competitors of the Respondent. Thus, the complaint warrants immediate intervention of the Commission.
- 4.3 That the Respondent has failed to substantiate how misleading warranty claims in advertisements or those printed on the product packaging was not a deceptive marketing

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practices in terms of Section 10(2) (a) & (b) of the Act. Instead, the Respondent has only made unsubstantiated statements with reference to their marketing practices not falling foul of Section 10 of the Act. It is evident that incomplete warranty claims have been made by the Respondent without laying down proper policy or procedures to claim such warranties by an aggrieved consumer. Such incomplete claims also induced consumers to opt, on the basis of such warranty claim, to the Respondent's products as opposed to the competitor's product. Thereby, not only misleading and exploiting the consumer but also adversely impacting competition within the relevant market.

- 4.4 That the Respondent's assertion that their warranty claims were not false, was a result of misreading of the law. Deceptive marketing practices include not only express statements but also omissions. Therefore, the Respondent's failure to provide complete information pertaining to the warranty claim was misleading the consumer. Additionally, it is settled law that it can be a deceptive practice, where only half-truth has been told and rest of the information is omitted.
- 4.5 That it was not enough on the part of the Respondent to claim that a six year's warranty was being provided, to which terms and conditions apply. The reason being that the consumer has no way to know and access the terms and conditions, and the method to claim such warranty. The Complainant has also stressed that the consumer is not a prudent or even a reasonable consumer in this instance. As per the Commission's order, the threshold of the consumer is that of the 'ordinary consumer'. Hence, such a consumer could be misled by opting for purchasing the Respondent's product due to warranty claim. Eventually, the Respondent can easily get away with the liability by stating that this particular warranty claim is not in accordance with the terms and conditions.
- 4.6 That the warranty claim and the fine print disclaimer regarding terms and conditions do little to mitigate the likelihood of deception. Further, not only is it extremely unlikely that the ordinary consumer would know that the helpline is to be contacted regarding the warranty claim but also that the helpline does not provide a clear warranty policy or a proper procedure to claim such warranty. In this regard, the Complainant has shared the call recording conversation between the Complainant and the Respondent.
- 4.7 The Complainant further rebutted on argument that no terms and conditions were available on a bucket where the claim of warranty has been made by the Respondent. Therefore, at the very least, the warranty claim has a tendency to deceive or mislead the consumer.
- 4.8 The fact that the Pakistani jurisdiction has no specific legislative framework regarding warranties, and whether written details are required does not take away that the competition law in Pakistan provides that deceptive marketing practices fall afoul of the Act. The warranty

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claim without provision of terms and conditions is a half-truth that is deceptive and is in contravention of Section 10 of the Act.

- 4.9 That not providing any policy documents or terms and conditions itself substantiates that the reply was a blatant lie. The Complainant once again reiterated that there was no such written policy or terms and conditions available for consumer. The Complainant clarified that the issue was not that the Respondent has not been providing such warranty but that the consumer was not communicated with full information. Warranty information pertaining to applicable terms and conditions has been omitted and the qualifying information was not available for ordinary consumer to make an informed decision. The consumer proceeds to buy the Respondent's paint on the basis of their warranty claim, for which no qualifying information was provided thereby not only adversely impacting the consumer but also the Respondent's competitors.
- 4.10 That the Respondent has failed to provide any qualifying information regarding the application of warranty claim to a consumer at the time of purchase. The ordinary consumer is unlikely to know that a helpline has been setup, and needs to be contacted for warranty claim unless such information has provided when warranty has been provided.
- 4.11 That the definition of warranty, provided by the Complainant in its complaint, was not for the purpose of proving whether so called warranty exists or not. The issue at hand was whether concealment of terms and conditions or half-truths while providing the warranty does amount to deceptive marketing practices or not.
- 4.12 That it has denied that the Respondent has complied with the Act, as the act of the Respondent misleads and deceives the consumer by providing incomplete information, and omitting key information. The Complainant also submitted that although Pakistani legislations may not provide for specific threshold in terms of warranty, but Competition Law, under Section 10 of the Act, clearly does set standards in terms of marketing practices.
- 4.13 That the Respondent has not provided actual written policy document to its consumers and only a *fine print disclaimer* has been given on paint bucket that terms and conditions are applied. The Respondent has not provided the method of accessing, as to what kind of terms and condition are applied and how the warranty would be claimed. In fact, such information regarding warranty claim is not available via helpline provided by the Respondent. The same can be verified through a recording evidence submitted by the Complainant. In light of the above the Complainant reiterated its prayers.

5. ANALYSIS

- 5.1 The Enquiry Committee was given the mandate to conduct an enquiry regarding the issues raised in the complaint, and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following issues:
- i. *Whether Section 10(2)(b) of the Act is violated?;*
 - ii. *Whether Section 10(2) (a) of the Act is violated?*
 - iii. *Whether there is a spillover effect of the conduct of the Respondent?*
- 5.2 Before moving forward, it is necessary to establish the difference between false and misleading information. The Commission, in its order held against **M/s CMPak Limited**², has defined “**False**” and “**Misleading**” information as deceptive marketing practices in the following manners:

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.”

- 5.3 The above reference suggests that any information distributed via marketing campaign can mislead consumers, if it is vague in any way or has omitted certain information, even if such a conduct is not deliberate. Consequently, distribution of misleading information is capable of giving a wrong impression with respect to a good or service which could induce a consumer into distorted decision making, hence, causing consumer injury, amounting to deceptive marketing practices in terms of Section 10 (2) (b) of the Act.
- 5.4 Similarly, any information distributed via marketing campaign, which results in the flow of business/economic value away from a competitor/s or helps gain an undeserved competitive advantage in the market, thereby harming business interest of other undertakings, amounts to deceptive marketing practices in terms of Section 10 (2) (a) of the Act. In order to draw analysis on the given mandate, it is necessary to understand the term warranty and its types.

² <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

WARRANTY:

- 5.5 A promise or assurance that may be expressed, implied by the circumstances, or implied by law. A warranty might be an express or implied statement that particular facts are true (for example, that merchandise may be used for particular purposes or that the seller has clear title to real estate). A warranty might be a promise to repair property within a certain period of time, or a legal obligation incident to a contract³.

EXPRESS WARRANTY:

- 5.6 In consumer or commercial transactions, a guarantee about the quality of goods or services made by seller, such as, "This item is guaranteed against defects in construction for one year." Most express warranties come directly from the manufacturer or are included in the sales contract. An assurance or promise made by a contracting party⁴.
- 5.7 The Australian Competition and Consumer Commission (ACCA) uses the term 'express warranty'⁵ in the following manner:

"As a business you may make extra promises or representations verbally or in writing about the quality or standard of a good".

This may, for example, refer to:

- *the quality, state, condition, performance or characteristics of the good*
- *what the good can do and for how long*
- *the availability of servicing, supply of parts or identical goods.*

IMPLIED WARRANTY⁶:

A promise, arising by operation of law, that something that is sold will be merchantable and fit for the purpose for which it is sold. An implied warranty of merchantability is an unwritten and unspoken guarantee to the buyer that goods purchased conform to ordinary standards of care and that they are of the same average grade, quality, and value as similar goods sold under similar circumstances. In other words, merchantable goods are those goods that are fit for the ordinary purposes for which they are to be used.

WARRANTY AGAINST DEFECTS:

- 5.8 A warranty against defects is a representation communicated to a consumer that if the goods or services (or part of them) are defective, the business will⁷:

³ <https://www.law.cornell.edu/wex/warranty>

⁴ <https://www.nolo.com/dictionary/express-warranty-term.html>

⁵ <https://www.accc.gov.au/business/treating-customers-fairly/offering-warranties>

⁶ <https://legal-dictionary.thefreedictionary.com/Implied+Warranty>

⁷ <https://www.accc.gov.au/business/treating-customers-fairly/offering-warranties/warranties-against-defects>

- repair or replace goods (or part of them)
- resupply or fix a problem with services (or part of them)
- provide compensation to the consumer.

A representation will only be a warranty against defects, if it is made at or around the time when goods or services are supplied.

A promise about what you as a supplier or manufacturer will do, if something goes wrong with a good or service can be a warranty against defects under the ACL even if it is not provided in a formal document.

Any material with writing on it, could evidence a warranty against defects, for example wording on the packaging or on a label, if those words contain such a promise.

5.9 In the case of Pakistan, to provide warranty as part of product, is not a mandatory requirement. However, the businesses voluntarily provide warranty to their customers. Moreover, no specific law mandates the businesses to provide such warranty and details of warranty to its customers. However, the Consumer Protection Laws of Pakistan provides protection against non-performance of such warranty.

5.10 In this regard, The Punjab Consumer Protection Act, 2005⁸, under section 8 provides that:

***Defective because of non-conformity to express warranty.**– A product shall be defective when it does not conform to an express warranty made at any time by the manufacturer about the product if the express warranty has induced the claimant to use the product and the claimant’s damage was proximately caused because the express warranty was untrue.*

5.11 The Sindh Consumer Protection Act⁹, 2014, under section 8 provides that:

“A product shall be defective when it does not conform to an express warranty made at any time by the manufacturer about the product if the express warranty has induced the claimant to use the product and the claimant's damage was proximately caused because the express warranty was untrue.”

5.12 The Khyber Pakhtunkhwa Consumer Protection Act, 1997¹⁰, under section 2(O)(vi) provides that:

Unfair Trade Practices: “falsely giving to the public any warranty or guarantee of performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;”

5.13 The Balochistan Consumer Protection Act¹¹, 2003, under section 2(O)(vi) provides that:

⁸ <http://punjablaws.gov.pk/laws/477.html>

⁹ <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XVII%20of%202015.pdf>

¹⁰ <https://crpc.org.pk/kpk-consumer-protection-act-1997/>

¹¹ https://pabalochistan.gov.pk/pab/pab/tables/alldocuments/actdocx/2021-04-01_08:32:09_c24d8.pdf

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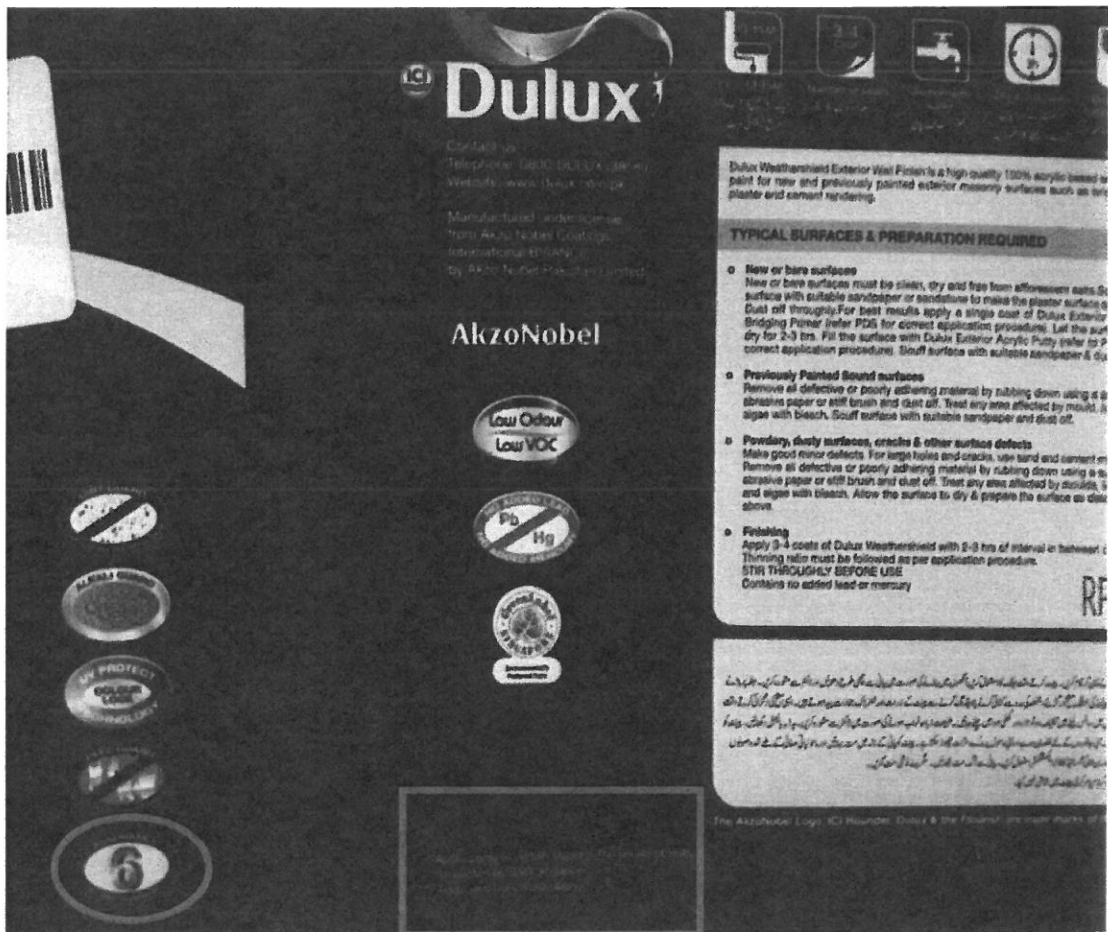
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falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;

5.14 In light of the above definitions, discussions and the submissions of the Complainant and Respondent, we will analyse the claim of the Respondent, and will establish whether the Section 10 of the Act has been violated or not.

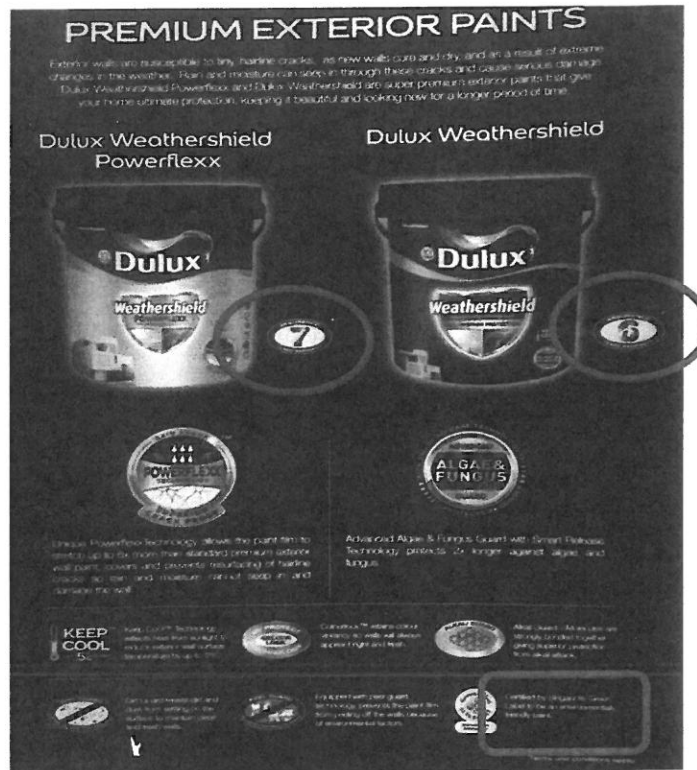
i. **Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character and quality of its products in, prima facie, violation of Section 10(1) in general and in particular, Section 10(2) (b) of the Act?**

5.15 The Complainant submitted that the Respondent has claimed and provided a 6-year warranty for one of its products, namely Weather Shield. However, this has been done without there being any codified policy and/or without providing the requisite information to the consumers regarding warranty claim. The warranty has been mentioned by the Respondent on its product packaging and also on shade cards. For ease of reference copy of the packaging material and shade card is reproduced below:



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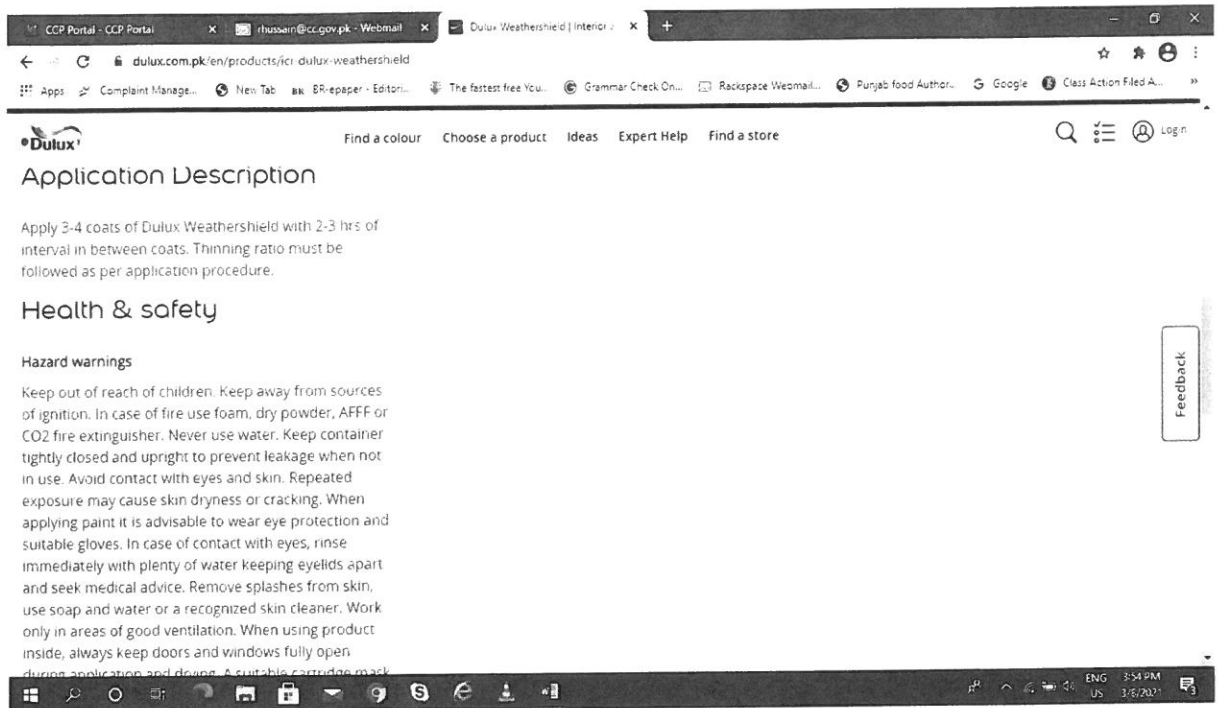
Product Packaging



Shade Card

- 5.16 From the above images, it is clear that 6-years and 7-year warranty has been provided by the Respondent for two of its products, i.e. Weather Shield and Weather Shield Power Flex, respectively. It has also been observed that wherever the Respondent mentioned the warranty either on its product packaging and/or shade cards, the same has been mentioned with Asterisk which categorically stated that '**Terms and conditions apply**'. In this connection, the Respondent submitted that these terms and conditions are available for all customers by communicating with the Respondent, including by calling the Respondent's Toll-Free helpline, which is mentioned on its product packaging and shade cards as well. It has been noted, however, that as can be seen in the images above displaying the shade card and paint packaging, the reference to the warranty stating "Terms and Conditions Apply" on the paint packaging is displayed in a very small font, making it unlikely that the consumer will notice it. (The same, however, is displayed in a bigger font on the shade cards.)
- 5.17 The Respondent also submitted that the information regarding '*terms and conditions*' was also available to the customers upon requests vide a number of different mediums, clearly communicated by the Respondent to its customers. In this regard, it has been observed that as a general practice, under the head of "Contact Us", three mediums, i.e., Toll-free number, website, and Facebook address, were available for customers to contact the Respondent. However, the customers were not directed specifically to contact the Respondent, vide given

mediums, for further information on warranty policy/terms and condition. Moreover, terms and conditions were not available on the abovementioned mediums, i.e., website, Facebook page, product packaging and shade cards. Screenshot of relevant portion of Respondent's website is depicted below:



Screen shot as on 03-01-2021

- 5.18 According to the Respondent, the consumer can demand terms and conditions by calling its toll-free helpline mentioned on the packaging and shade card. The Respondent was asked to submit evidence of providing written terms and conditions on a demand of customer. The Respondent could only share a copy of the technical warranty letter, detailing the terms and conditions of warranty being offered by it, issued to one of its corporate consumers (relatively a prudent/reasonable consumer), namely Federation of Pakistan Chamber of Commerce Institute. However, the consumer is not prudent or even a reasonable consumer in this instance, considering the Commission's Order (ZONG Order), the consumer is taken as the 'ordinary consumer'. An ordinary consumer who is in the market to buy paint, upon reading that a six-year warranty is being provided without mentioning the terms and conditions, is unlikely to contact the Respondent and inquire regarding the warranty claim and its applied terms and conditions, and will only feel the need to do so in the event that a defect occurs.
- 5.19 The Complainant in its rejoinder has submitted that it is a fact that the Pakistani jurisdiction has no specific legislative framework in place regarding warranties and whether written details are required. The Respondent, in its reply, has also submitted that within the jurisdiction of Pakistan no specific law mandates the Respondent to provide further written details of the warranty. However, contrary to the submissions of both the parties, the Consumer Protections Laws in Pakistan, bound the manufacturers/seller of a product to disclose relevant material

information regarding Component **parts** of the product. In this regard, the relevant sections of the law are reproduced below.

5.20 The Punjab Consumer Protection Act¹², 2005, under section 11 of the Act, provides that:

Duty of disclosure.— (1) Where the nature of the product is such that the disclosure of its component parts, ingredients, quality, or date of manufacture and expiry is material to the decision of the consumer to enter into a contract for sale, the manufacturer shall disclose the same.

(2) Notwithstanding anything contained in sub-section (1), the Government may, by general or special order, require such disclosure in any particular case.

5.21 The Sindh Consumer Protection Act¹³, 2014, under section 11 provides that:

11. (1) Where the nature of the product is such that the disclosure of its component parts, ingredients, quality, or date of manufacture and expiry is material to the decision of the consumer to enter into a contract for sale, the manufacturer shall disclose the same.

(2) Notwithstanding anything contained in sub-section (1), Government may, by general or special order, require such disclosure in any particular cases.

5.22 The Khyber Pakhtunkhwa Consumer Protection Act¹⁴, 1997, under section 7A provides that:

[7A. Duty of disclosure.---(1) Where the nature of goods or products details are such that the disclosure of its components, parts, quality, ingredients, or date of manufacturing and expiry is material to the decision of the consumer to enter into a contract of sale, the manufacturer shall disclose the same.

(2) Where the nature of service is such that disclosure of capabilities or qualification of the services provider or quality of the products that service provider intends to use, is material to the decision of the consumer to enter into contract, the services provider shall disclose the same.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court or the Director may, by general or special order, require such disclosure in any case.

5.23 As far as the Toll-free number is concerned, it is unlikely that the ordinary consumer would know that the Helpline is to be contacted regarding the warranty claim because he is not explicitly told to do so. The call recording submitted by the Complainant to the Enquiry Committee confirms that the Respondent was unable to communicate such terms and conditions of warranty to its customers through the Helpline (Audio Call recording is attached as Annex-A).

¹² <http://punjablaws.gov.pk/laws/477.html>

¹³ <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XVII%20of%202015.pdf>

¹⁴ <https://crqp.org.pk/kpk-consumer-protection-act-1997/>

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- 5.24 In order to confirm the authenticity of this information, the Enquiry Committee called the Toll-free number (0800-38589), dated 20-08-2021 at 12:08 pm, 12:10 pm & 03:42 pm and on August 23, 2021, at 11:04 am. However, the Toll-free number remained unattended each time (call recording is attached as **Annex-B**).
- 5.25 Additionally, the Enquiry Committee conducted a market visit to G-8/1, Islamabad, on the 17th of August 2021, in order to ascertain whether warranty terms and conditions are available with dealers and retailers. None of the dealers or retailers visited could offer any information regarding warranties, with some even stating that they could not offer even a one day warranty, and that the manufacturer had given them no information regarding warranties or how to claim them.
- 5.26 Besides the above, the Respondent submitted to have in place a comprehensive framework for warranty being offered by it, which remains unchanged since 2017. However, the Respondent has did not share such policy framework document with the Enquiry Committee. The Respondent claimed to have entertained hundreds of warranty claims and spent millions of rupees in compensation under warranty program. The Respondent shared details of such warranty claims, compensated by it through its Customer Relationship Management System. According to the document submitted by the Respondent, 433 complaints were compensated out of 643 complaints entertained from the year 2019 to June 2021, with a compensation value of PKR 12.33 million (Customer wise detail is attached as **Annex-C**).
- 5.27 In view of the above, therefore, it is clear that the Respondent *does* have a written warranty policy in place, and has compensated consumers under said warranty in the past. It is noted, however, that the Respondent does not communicate said warranty to consumers at the time of purchase. This information is capable of influencing a consumer's decision to purchase the Respondents products rather than that of a competitor, and is therefore, material information. The failure to communicate this information results in the omission of material information.
- 5.28 This enquiry considered the Respondent's warranty of 6 and 7 years for two of its products i.e., Weather Shield and Weather Shield Powerflex, respectively. The Respondent has displayed an Asterisk, wherever the warranty claim has been made, which states in fine print that "*Terms and conditions*" apply. However, the explicit terms and conditions are not mentioned. No information has been provided as to how they can be accessed. The omission on part of the Respondent, by not informing the consumers that the Toll-free number is given to contact for such terms and condition of warranty, and omission to mention the terms and conditions anywhere on the website, shade card, packaging etc. has a potential to mislead consumers. It is well settled principle that¹⁵ "*for the purpose of deceptive marketing, actual deception need not to be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency to deceive and capacity to mislead*". **In the case of International Harvester Co., 104 F.T.C. 949 at pg. 1058**, it was held that,

"[i]t can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary

¹⁵ <https://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

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to prevent one of his affirmative statements from creating a misleading impression...”

... “It can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitutes an implied but false representation.”

5.29 The Respondent submitted that nothing has been omitted, and the consumer can call at 0800-38589 i.e., toll free customer service number to obtain all the requisite information regarding terms and conditions and warranty claim. However, it has been observed that the consumers were not informed to use the Toll-Free number and get the requisite information, i.e., terms and conditions. The advertisement, however, mentions that the “*terms and conditions apply*”. Though, while calling at 0800-38589 (Annexure-A), it was observed that the representative of the Respondent guided the consumer regarding how to avail such warranty, in case of defect. When the consumer asked to provide the actual terms and conditions of such warranty, the Respondent failed to do so. Therefore, the omission of such information (terms and conditions) clearly contributes to deceptive marketing. The omission regarding applicable ‘terms and conditions’ is a material information, and deceptive, in terms of Section 10 of the Act. Reference is made to *Cliffdale Associates, Inc., 103 F.T.C. 110, (1984)* wherein it was held:

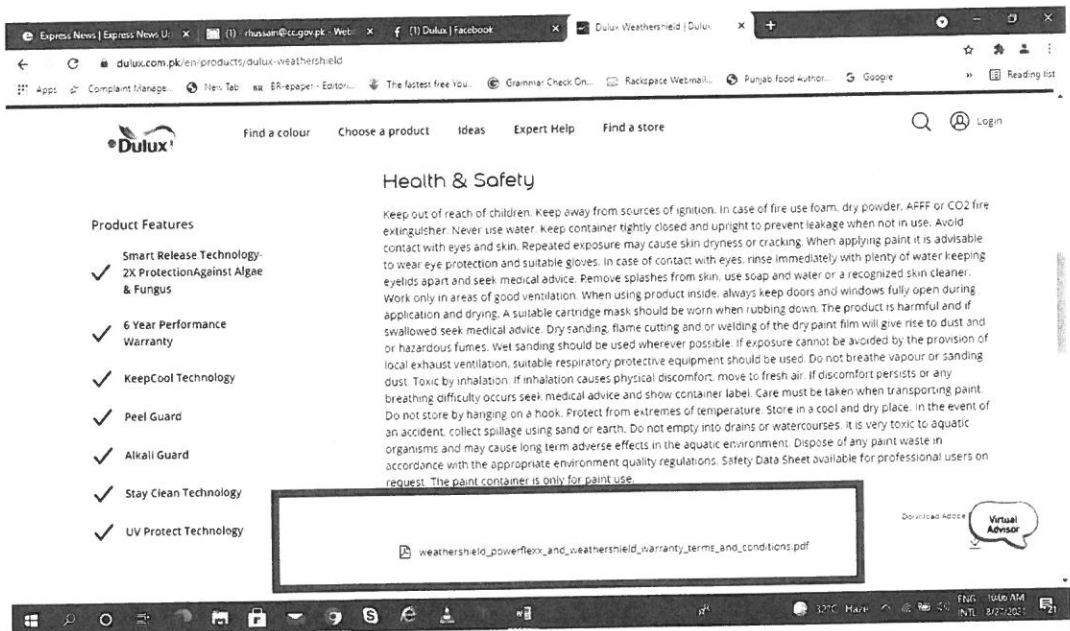
“Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser.”

5.30 The omission of such material information and the implied impression conveyed through representations are of the nature that is likely to be deceptive even for prudent man/reasonable consumer. In view of the above discussion, the Enquiry Committee is of the view that the advertisement of ‘6 years and 7 years warranty without mention of actual terms and conditions, was false and misleading. Hence being deceptive and in violation of Section 10 of the Act in terms of sub-section (1), and clause (b) of sub-section (2). The claim of the Respondent lacks a reasonable basis regarding the quality and character i.e., exclusively providing the best quality product with warranty without mentioning the actual terms and conditions applicable for such warranty claim.

5.31 It is noted that during the course of this Enquiry, the Respondent has made a few changes in its advertisement, and has provided access to the terms and conditions of warranty by scanning QR code provided on such advertisements. Once scanned, the QR code opens the website for Dulux Weather Shield, i.e., <https://www.dulux.com.pk/en/products/dulux-weathershield-powerflexx>, which now contains the warranty terms and conditions. Copy of new advertisement containing QR scanning option and screenshot of the relevant portion of website are depicted below:

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Website screenshot as on August 27, 2021

5.32 While going through the now given terms and conditions, it has been observed that the following methods have been provided by the Respondent to claim warranty:

- a) Contact Call Centre 0800-DULUX (38589) and email or WhatsApp in accordance with clause 11 and 12 of terms and conditions.
- b) WhatsApp 0300-01DULUX (38589).

As mentioned above in para 5.18 *ibid*, the given Toll-free number remained unattended and there is no mention of email address in the terms and conditions. Moreover, on WhatsApp number, the virtual advisor provided the information regarding colour choice and the product itself, without mentioning the terms and conditions or any other information regarding the warranty.

ii. Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in, prima facie, violation of Section 10 (2) (a) of the Act?

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- 5.33 Clause (a) of Section 10 of the Act provides that '*the distribution of false or misleading information that is capable of harming the business interests of another undertaking*' shall be deemed to constitute a deceptive marketing practice.
- 5.34 With reference to the above, the Complainant submitted that the Respondent has made a warranty claim without there being an actual framework for the said warranty. Claims of warranty are made to advance a market player's commercial and competitive advantage. The Complainant further submitted that after selling its products, the Respondent can easily deceive and/or dodge its consumers by changing its terms and conditions every time the consumer comes to claim a warranty. Such actions of the Respondent do not just amount to unfair practices but also unethical trade practices. Moreover, such false warranty will give unfair advantage to the Respondent as compared to its competitors in the market.
- 5.35 Furthermore, such false warranty claim has a potential to mislead and/or convince the consumer into giving preference to Respondent's product over its competitors. This would ultimately result in causing harm to the profits of its competitors. The warranty claim in question leaves an impression on the ordinary consumer that the Respondent is manufacturing the best quality product, and it will convince ordinary consumer to buy Respondent's product.
- 5.36 On the other hand, the Respondent submitted that its warranty claim is not capable of harming the business interest of the Complainant or that it lacks a reasonable basis. Moreover, if the Complainant feels that the warranty being provided by the Respondent is harming the Complainant's business interests, there is nothing barring the Complainant from providing a similar warranty for the benefit of its consumers.
- 5.37 Although, the Respondent has a comprehensive policy document on warranty and it had also spent millions of rupee worth of compensation. However, in the advertisement, the Respondent had omitted certain material information. Omission of such information (terms and conditions) clearly contributes to deceptive marketing.
- 5.38 Here we point out that any claim which is either false, misleading or is lacking a reasonable basis would give the claiming undertaking a competitive edge over other undertakings, and would ultimately result in higher sales. Furthermore, the language of Section 10(2) (a) of the Act and the principle laid down by the Commission in its Zong and Ufone Order dated 29-09-2009¹⁶, the actual deception and the actual loss need not to be shown. It is sufficient to establish that the advertisement has the tendency/potential to deceive, and the capacity to mislead. The Respondent's claim in the advertisement has the tendency to mislead the consumers, and induce them to take a transactional decision based upon the claim made in the Advertisement i.e. *assurance 6 years & 7 years warranty* without mention of actual terms and conditions.
- 5.39 Moreover, the Commission, in its Order held against M/s Jotun Pakistan (Pvt.) Limited¹⁷, states that;

¹⁶ <https://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

¹⁷ http://cc.gov.pk/images/Downloads/jotun_pakistan.pdf

“To prove conduct under Section 10 (2) (a) of the Act, it is not necessary to show actual harm to competitors. It is sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interest of the competitors. Among such deceptive marketing practices is the distribution of claims lacking reasonable basis that are essentially designed and used to gain an unfair advantage over competitors.”

5.40 Keeping in view of the above, we are of the view that, *prima facie*, the conduct of the Respondent i.e., making of warranty claim in its advertisement with omission of material information, is capable of harming the business interest of the Complainant in violation of Section 10(2) (a) of the Act.

iii. Whether there is a spillover effect of the conduct of the Respondent?

5.41 As regards the effect of anti-competitive behaviour spilling over territorial limits of other provinces is concerned, it is pivotal to mention that the product of the Respondent is sold nationwide via distribution network in the generic market, thus removing the intra provincial territorial boundaries.

6. CONCLUSION AND RECOMMENDATIONS:

6.1 In light of the facts, it appears that the conduct of the Respondent, *prima facie*, amounts to a violation of Section 10 (1) in terms of Section 10 (2) (b) of the Act, which prohibits undertakings from dissemination of false or misleading information to consumers, without a reasonable basis, related to the character and quality of its products.

6.2 In view of the analysis, it can also be concluded that the conduct of the Respondent, *prima facie*, through dissemination of false or misleading information, has the potential to inflict harm on the business interest of other undertakings such as the Complainant, in violation of Section 10 (1) in terms of Section 10 (2) (a) of the Act.

6.3 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their products in an unfair and misleading manner, and be encouraged to resort to transparent advertising practices, which provide consumers/customers true and correct information. *Prima facie* violations under the Act in terms of the conclusions of this enquiry report warrant initiation of proceedings under Section 30 of the Act against the Respondent i.e. AkzoNobel Pakistan Limited in accordance with the law.



Mr. Usman Ahmed
Deputy Director (OFT)
(Enquiry Officer)



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Assistant Director (OFT)
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