

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

IN THE MATTER OF ALLEGED DECEPTIVE MARKETING PRACTICES BY DAIRY COMPANIES

BY

Marryum Pervaiz & Maliha Quddus

Dated: 16 March 2016

A. BACKGROUND:

- 1) The Competition Commission of Pakistan (hereinafter the ‘**Commission**’), took notice of concerns against certain undertakings engaged in the production and distribution of dairy products and tea whiteners for alleged violation of Section 10 of the Competition Act, 2010 (hereinafter the ‘**Act**’) i.e. deceptive marketing practices.
- 2) Concerns were raised that these undertakings were marketing dairy drinks and tea whiteners as “milk” whereas both these categories of products are using a proportion of dry milk in their ingredients and cannot be considered as fresh milk. Through advertisements the public is being misled into believing that they are consuming milk whereas what they are actually consuming are ‘dairy drinks prepared from powdered milk’ or ‘liquid tea whiteners’.
- 3) Keeping in view the above, the Competent Authority initiated an Enquiry in accordance with Section 37 of the Act by appointing Ms. Maliha Quddus, Deputy Director (Cartels) and Ms. Resham Ibrahim, JEO (Office of Fair Trade) as enquiry officers. During the course of enquiry Ms. Resham Ibrahim has resigned and thus the competent authority appointed Ms. Marryum Pervaiz, Deputy Director (Office of Fair Trade) as enquiry officer in her place to conclude the enquiry.
- 4) The enquiry officers were directed to conduct the enquiry and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:
 - (i) Whether the conduct of the undertakings is capable of harming the business interest of other undertakings in terms of Section 10(2)(a) of the Act?
 - (ii) Whether the undertakings are disseminating false/misleading information to the consumers that lacks a reasonable basis, related to character, properties, suitability for use, or quality of goods in terms of Section 10(2)(b) of the Act?
 - (iii) Whether the undertakings are involved in the false and misleading comparison of goods in the process of advertising?

B. RESEARCH BY THE ENQUIRY OFFICERS:

- 5) In order to find out the major players involved in the production of dairy drinks and tea whiteners, the enquiry officers conducted a survey in the major markets of Pakistan. After the detailed inspection of major departmental stores in the respective markets it has been observed that following undertakings are mainly involved in the manufacturing of dairy drink and tea whiteners:

- i) Nestle Pakistan Limited
- ii) Shakarganj Food Products Limited
- iii) Haleeb Foods Limited
- iv) Noon Pakistan Limited
- v) Engro Foods Limited (hereinafter collectively referred as '**Respondents**')

C. CORRESPONDENCE WITH THE RESPONDENTS:

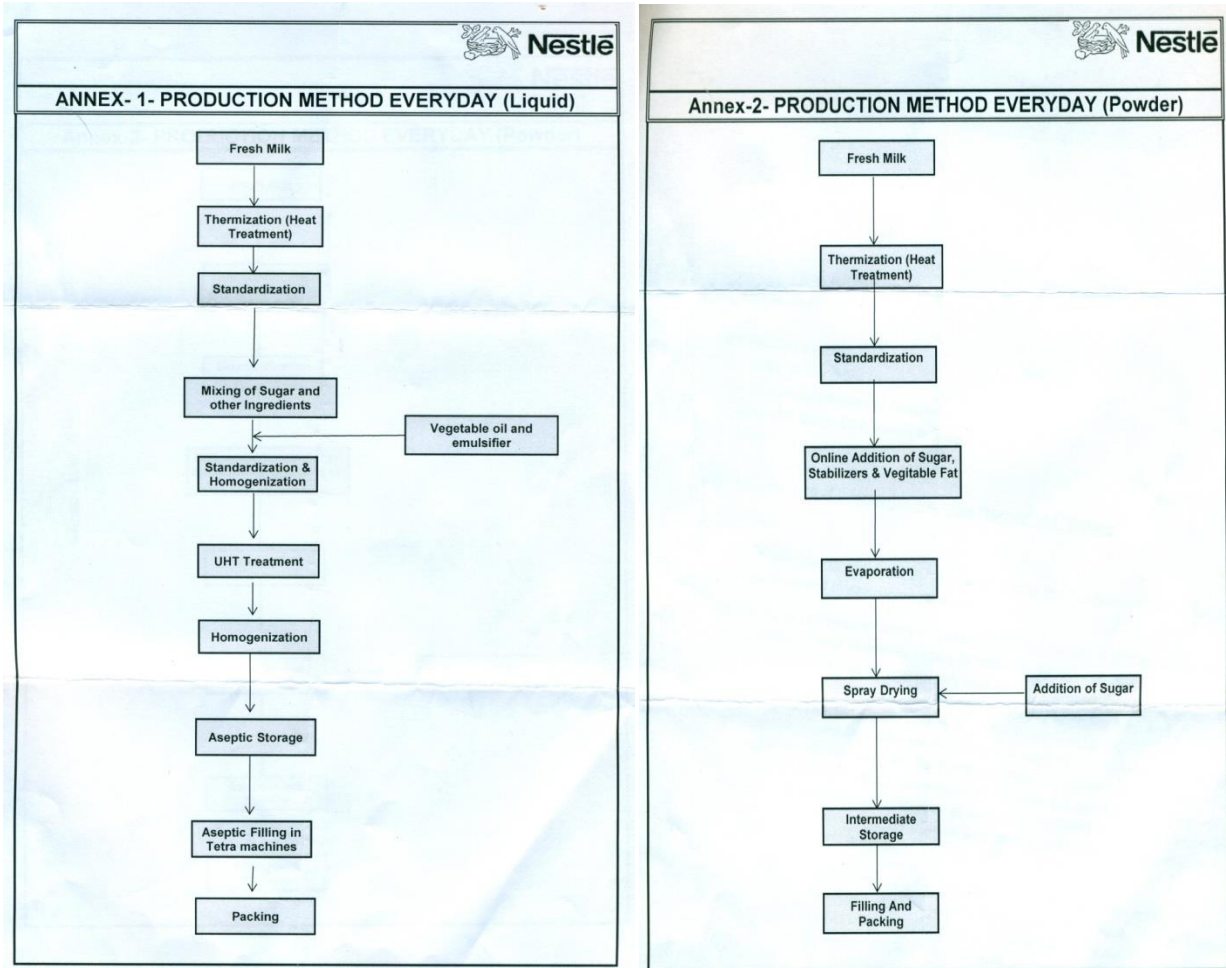
- 6) Subsequent to research carried out by the enquiry officers, letters were written to the Respondents requesting them to provide the following information regarding tea whiteners and dairy drinks being produced and marketed by them:
 - information on details of production method;
 - details of contents; and
 - clarification regarding the concerns raised that they were marketing tea whiteners and dairy drinks as milk.

D. RESPONDENT'S SUBMISSIONS:

i. NESTLE PAKISTAN LIMITED.

- 7) Nestle in Pakistan is operating since 1988 under a joint venture with Milk Pak Ltd and took over management in 1992. Their major production includes:
 - a) Ambient Dairy
 - b) Chilled Dairy
 - c) Juices
 - d) Bottled Water
 - e) Culinary & Foods
 - f) Baby Foods
 - g) Breakfast Cereals
 - h) Coffee
 - i) Confectionery
- 8) Nestle is a manufacturer of a powdered as well as liquid tea whitener "Everyday". Upon the enquiry as indicated in para 6 above, the undertaking requested for an extension in time which was duly granted to them by the enquiry officers. On the completion of time the undertaking submitted its reply by stating that presently Nestle Pakistan is manufacturing two variants of Everyday, one is in powder form i.e. "Powder Tea Whitener" and the other is in liquid form i.e. "Tea Creamer" which is clearly mentioned on their respective packaging.

- 9) They have submitted that Everyday is exclusively intended to be used as tea whitening/creaming. Neither Everyday product is declared as milk in the marketing campaigns nor on the packaging.
- 10) They further submitted that “liquid/powder tea whiteners” are distinct products separate from “milk” under the food regulatory regime. Everyday powder contains milk Solids not Fats (SNF), milk fat, sugar, non-hydrogenated vegetable fat, stabilizers and emulsifier. Everyday liquid contains the same ingredients with the additional milk solid; milk whey. The flow of production methods for both the products is as under:



ii. SHAKARGANJ FOOD PRODUCTS LIMITED:

- 11) Shakarganj Food Products Limited is a medium sized public limited company set up by the Shakarganj Group in 2006 to diversify its business activities. Shakarganj operates a Dairy Division that primarily produces products packed in Tetra Pak packages focusing on the needs of the local consumers. The Juice Division, on the other hand, produces Juice Concentrates targeted to the wholesale export market.

- i. In the dairy drink category it sells the product '*Dairy Pure*' and
 - ii. In the tea whitener category it sells '*Chaika*' and '*Qudrat*'
- 12) In response to the concerns raised that dairy companies are marketing certain products as milk even though they are dairy products prepared from milk powder Shakarganj provided a clarification regarding milk powder. They submitted that powdered milk is a dairy/milk product made from milk. It is just a dried milk and there is a misunderstanding that powdered milk is an unnatural product or not relating to milk. The food safety laws, standards, regulations, recognize several kinds of dairy products including liquid tea whiteners, powdered or dried milk. The only requirement is that for every kind of dairy products there are standards which are to be fulfilled.
- 13) Shakarganj further submitted that they are fulfilling all the requirements for every product they are producing and the information provided while marketing these products is true and in accordance with the actual ingredients as required by the relevant Pakistan Standards and Quality Control Authority ('PSQCA') standards for each product. They claim that these products are dairy/milk products and so there is no question of distribution of false or misleading information to consumers. They were inquired about Dairy Pure and Chaika. Their submission for both the products is as follows:
- 14) "Chaika": Is a liquid tea whitener and is being marketed as such in terms of PSQCA standards regarding Liquid Tea Whitener. They claim that consumers know the difference between tea whitener and raw milk.
- 15) "Dairy Pure": Is a dairy/milk product and also fulfills the PSQCA standards. The packages are clear about the ingredients and the marketing is also in accordance with the quality of this product.

iii. HALEEB FOODS LIMITED:

- 16) The first product launched by Haleeb Foods Limited was Haleeb milk and today it has expanded its business to include juices, tea whiteners, butter, other dairy products to its production and packaging lines.
- i) In the dairy drinks category it is selling 'Grow Aur' and 'All Max'.
 - ii) In the tea whitener category it is selling 'Tea Max' and 'Dairy Queen' (available in fino and tetra packaging) both of which are liquid tea whiteners.
- 17) In response to the letter of the Commission Haleeb Foods requested for an extension in time of two weeks. The undertaking in its reply noted that they have never marketed Tea Max and Dairy Queen as milk. They also submitted that the production of "Gro Aur" has been discontinued for over seven months of the date of the response. Their product wise submission for the liquid tea whiteners is as follows:
- 18) "Tea Max": Is a liquid tea whitener comprising of 6.5% milk fats and 4% milk solids other than fat and is Pakistan Standard compliant with the relevant standards. The

product's packaging clearly states that Tea Max is a liquid tea whitener. The ingredients listed thereon, in no way, allude to it being milk. The packaging has a cup of tea printed which coupled with the promotional statement printed at the head of the packaging i.e. "*naya behtar maza, banaye zayada cup*" clearly shows that Haleeb has never promoted or marketed the product as milk. The packaging under the ingredients expressly states that the product is "not a milk replacement for infants".

- 19) "Dairy Queen": Is also a liquid tea whitener and is also categorized as Pakistan Standard compliant. The product is available in soft plastic packaging on which it is clearly stated that the product is an ultra-high-temperature processed tea whitener. Moreover, the product's packaging and promotion clearly indicate that it is promoted for use with tea and snacks and not as a substitute for milk.
- 20) They further alleged that Tea Max and Dairy Queen are although liquid tea whiteners but cater to different classes of consumers. The variation of content of milk solids other than fat and the difference in their respective packaging gives undertaking the margin to price the products differently.
- 21) Tea Max is promoted as a premium brand and is accordingly charged a higher price. Dairy Queen due to lower content of milk solids other than fat, is more affordably priced. The price of the products has a direct correlation to the quality and Haleeb Foods has not disseminated any information that may suggest otherwise. No unsubstantiated claim is made by Haleeb Foods which is capable of giving it an undue advantage over its competitors.

iv. NOON PAKISTAN LIMITED:

- 22) Noon Pakistan Limited was incorporated in Pakistan on 26 September, 1966 as a Public Limited Company. In the private sector, Noon Pakistan Limited is the first Company in Pakistan to operate a Spray Dryer for processing of milk powder. At present, the undertaking is principally engaged in processing and sale of various dairy products and juices with the brand name of Nurpur. The undertaking has recently been bought by FaujiFertilizer Bin Qasim Limited.
- 23) The undertaking is manufacturing a dairy drink 'Daily Rozana' and a tea whitener 'Chai mix'. Description of both the products is as under:
- 24) "Dairy Rozana": After the acquisition of Noon Pakistan Limited by Fauji Fertilizer Bin Qasim Limited (FFBL), the undertaking has stopped the production of Dairy Rozana and therefore, it is no longer available in the market.
- 25) "Chai Mix" is the product being produced in compliance with the Pakistan Standard (PS-4873:2008) and is being marketed as tea whitener and not as milk. Constituency of Chai Mix along with a comparison of Pakistan Standards is given as under:

Tea Whitener (Chai Mix)		
	Noon Pakistan Specs	PS:4873:2008 Standard
Fat	6.50% ± 0.05%	Min 6.50% Fat
SNF	5.725% ± 0.125%	Min 3%

v. **ENGRO FOODS LIMITED:**

- 26) Engro Foods is a subsidiary of Engro Corporation and is engaged in the manufacturing, processing and marketing of dairy products, frozen desserts and fruit drinks. Engro Foods made its foray into the consumer foods business in 2006 with the launch of Olper's all-purpose milk.
- 27) In the dairy drinks category they are currently producing and marketing 'Omung' and in the tea whiteners category they are currently selling liquid tea whiteners 'Tarang' and 'Tarang Elaichi'.
- 28) Engro Foods mentions that their products being investigated in reference to possible deceptive marketing strategies, comply with the standards set by PSQCA. They further submitted data related to each of their products which was enquired,
- 29) "Tarang" is a liquid tea whitener which is registered with the PSQCA and complies with the Pakistan Standard applicable to liquid tea whiteners. This alludes that the liquid tea whitener to contain minimum 6.5% milk fat or vegetable fat, minimum 3% milk solids other than fat and other permissible food additives. The ingredients of the product are explicitly mentioned on the packaging as Vegetable Fat, Milk SNF, Sugar, Milk fat and Stabilizers. They claim that the product is a "tea whitener" and not milk since it possesses the functionality of tea whitening.
- 30) They claimed that Tarang has always been marketed as a liquid tea whitener and is communicated as being tea's perfect complement. Their advertising campaigns for Tarang use the tagline, "*Chai ka sahi jor*" which implies its complementarity to tea. They further alleged that they are not engaged in any marketing practices which could be misleading or deceptive across any medium. They state that they have not used any creative liberty in any communication to show that the product is milk or its equivalent.
- 31) "Dairy Omung" is a dairy drink registered with PSQCA which defines dairy drink as "milk/milk based product which has been reduced to the prescribed level of milk fat and milk SNF". Dairy Omung is clearly referred to as a "Dairy Drink" on its packaging and the label is highlighted in the first line of the product label, above the Dairy Omung brand logo itself. This labeling reflects that Dairy Omung is not milk and indicates the product formulation which is produced in line with the standards of the "Dairy Drinks" product category defined by PSQCA. With regards to the suitability and quality of the product they claim that Dairy Omung is sourced from pure milk, which has undergone globally accepted processes of pasteurization, homogenization and UHT treatment.

- 32) With regards to the marketing of Dairy Omung the information disseminated to the consumer clearly focuses on the hygiene aspect. The communication aims to indicate that Dairy Omung is a more hygienic alternative to most of the adulterated loose milk to which consumers are often exposed. The marketing communicates the functionality of the product as being suitable for multipurpose usage. At no point in its communications is the product referred to as Milk. The UHT allows the dairy drink to become less perishable thus allowing the beverage to be stored for longer time periods as compared to its ‘fresh milk’ or ‘milk’ counterpart.

E. ANALYSIS:

- 33) Before going to make the analysis, it is important to mention here that there are a set of standards defined by Pakistan Standards and Quality Control Authority (PSQCA) and Punjab Food Authority (PFA) for dairy products such as milk, dairy drinks and tea whiteners for dairy manufacturers to follow. In accordance with the scope of this enquiry, it is important to develop a better understanding of the said standards in terms of ‘Milk’, ‘Dairy Drinks’ and ‘Liquid/ Powdered Tea Whiteners’.

- 34) PSQCA defines Standardized Milk¹ as:

“It means milk, standardized to contain not less than 12.4% of milk solids, including not less than 3.5% of milk fat provided that the term standardized refers to standardization of fat contents.”

- 35) Similarly, PFA, in Punjab Pure Food Rules, 2011, defines ²Milk as:

“Milk, means the normal, clean and pure secretion obtained from the mammary glands of a healthy cow, buffalo, goat, camel or sheep (halal milk animals), whether boiled, homogenized, pasteurized, sterilized or UHT and includes standardized, reconstituted milk. Milk shall contain not less than 34 percent of milk protein in milk solids other than milk fat and Lactose not less than 4.6 percent in milk solids other than milk fat. It shall be free from colostrum. Milk shall not contain any added water, permitted food additive, other added substances, traces of antibiotic substance and hormonal residue.”

- 36) Therefore, any product claiming to be milk, must contain milk protein not less than 34% of SNF and lactose not less than 4.6% of SNF, extracted from Halal animals. It is important here to mention what are SNF. Solids-Not-Fat³ are substances in milk other than butterfat and water; abbreviated as SNF. They include casein, lactose, vitamins and

¹ 4.7, Dairy Safety & Standard for Milk and Milk Products, PS: 4873-2008, Standard Development Center, PSQCA.

² Milk, Punjab Pure Food Rules, 2011, Appendix II, Milk and Milk Products

³ <http://medical-dictionary.thefreedictionary.com/solids-not-fat>

minerals which contribute significantly to the nutritive value of milk. It is important to maintain specific levels of SNF as defined in standards in order to retain the nutritive value of milk or respective milk products.

37) ⁴Dairy Drinks as defined by PSQCA is:

“Dairy Drink means milk/ milk based product which has been reduced to the prescribed level of milk fat and milk SNF. It shall contain not less than 7 percent of milk solids other than milk fat and it shall contain not less than 10 percent of milk solids including 3 percent of milk fat provided that source of preparation is from Halal Milch Animals. It shall be homogenized, pasteurized, sterilized / UHT. The dairy drink will be free from any added non-dairy ingredients except the permitted food additives and nutrient supplements.

There shall be written in the label on a package containing dairy drink, the word “Dairy Drink”. These words shall from the first line of the table in bold form than the brand name and no other words shall appear in the same line.”

38) It is evident from the definition of a dairy drink that it is a ‘milk or milk based product’ reduced in constituents up to a certain prescribed level, as given within the definition. Therefore, a dairy drink can be processed from ‘Milk’ as defined by the standards given by PSQCA or from any derivative of ‘Milk’ as per the definition. ⁵‘Milk Products’ are defined under Punjab Pure Food Rules, 2011, as:

“means and includes cream, concentrated milk, condensed milk, skimmed milk, separated milk, flavoured milk, milk for making tea/tea whitener, milk shake, milk drink, dahi, yoghurt, khoa, barfi, pera, kalakand, cheese, dried milk, dried milk for making tea/tea whitener, ice cream and any other product made by the addition of any substance to milk or to any of the milk products and used for similar purposes. Milk Products shall not contain any substance not found in milk unless specified in the standards.

39) However, it should, in any case be, free from any non-dairy ingredient such as lab formulations or such, except permitted food additives and nutrient supplements.

40) Descriptions for the tea whitener is also provided by PSQCA and Punjab Pure Food Rules, 2011. PSQCA defines Liquid Tea Whitener⁶ as:

⁴ 4.23.1., Dairy Safety & Standard for Milk and Milk Products, PS: 4873-2008, Amendment No. 1, Standard Development Center, PSQCA.

⁵ Milk Products, Punjab Pure Food Rules, 2011, Appendix II, Milk and Milk Products

⁶ 4.20. Dairy Safety & Standard for Milk and Milk Products, PS: 4873-2008, Standard Development Center, PSQCA

“Means with minimum 6.5% milk fat or vegetable fat, Min 3% Milk SNF, and other permissible food additives.”

41) Whereas, Punjab Pure Food Rules, 2011, defines ‘Liquid Tea Whitener’⁷ as:

“Means with 6.5 percent fat (3.5% milk fat and 3.0% vegetable fat), Minimum 3.0 percent solid not fat (SNF) and other permissible food additives.”

42) From the definitions under PSQCA and Punjab Pure Food Rules, 2011, it is clearly not specified or mandatory whether liquid tea whiteners should be sourced from milk or milk based products or any other source can be used. Hence, even if any other source qualifies for the defined constituency in the standard, it can be termed as a liquid tea whitener.

43) Powdered Tea Whitener as describe by Punjab Pure Food Rules, 2011⁸:

shall contain minimum of 15 percent milk fat or vegetable fat minimum 30 percent milk solids not fat (SNF) and other permissible food additives.

44) As far as the labeling of tea whiteners is concern, Punjab Pure Food Rules, 2011, stated that it is mandatory for an undertaking manufacturing Liquid Tea Whiteners to label their product as⁹:

*** _ _ _ _ milk for making tea/ tea whitener liquid
** contains added sugar**

**Here insert the brand or trade name in the equal uniform size (lettering).*

***Size of font shall be not less than 12 point lettering.*

45) However the package containing tea whitener powder/ tea mix powder shall bear the following label:

*** _ _ milk powder for making tea/ tea whitener
powder
** contains added sugar**

**Here insert the brand or trade name in the equal uniform size (lettering).*

***Size of font shall be not less than 12 point lettering.*

⁷ Liquid Tea Whiteners, Punjab Pure Food Rules, 2011, Appendix II, Milk and Milk Products

⁸ <http://punjabfoodauthority.gov.pk/instruction/PFR2011.pdf>

⁹ 18 (5) (g), Part 3, Labelling of Milk and Milk Products, Punjab Pure Food Rules, 2011

- 46) After going through the definitions given by PSQCA and Punjab Pure Food Rules, 2011, let us recall how Section 10 of the Act¹⁰ describes Deceptive Marketing practices:

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;

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

(d) fraudulent use of another's trademark, firm name, or product labeling or packaging.

- 47) Now in the light of para 33 to 46 above, we can analyze each of the product manufactured by the Respondents. However, in order to draw a conclusion regarding the, *prima facie*, violation of Section 10 of the Act it is important to consider the packaging, marketing practices (including the TV Commercials(TVC's)) and the overall net general impression taken by the ordinary consumer after going through the advertisements/ marketing by the Respondents.

- 48) For the purpose of clarity we will analyze the products under the head of each Respondent making it. Lets recall the list of Respondents as already provided in para 5 above :

- i) Nestle Pakistan Limited
- ii) Shakarganj Food Products Limited
- iii) Haleeb Foods Limited
- iv) Noon Pakistan Limited
- v) Engro Foods Limited

¹⁰ http://www.cc.gov.pk/images/Downloads/competitionn_act_2010.pdf

i. **NESTLE PAKISTAN LIMITED:**

49) The brand manufactured by Nestle Pakistan Ltd is Everyday.

TEA WHITENER (EVERYDAY):

1. **EVERYDAY:**

50) Nestle is not making any dairy drink however they are manufacturing two variants of Everyday, one is in powder form i.e. "Powder Tea Whitener" and the other is in liquid form i.e. "Tea Creamer" which are clearly mentioned on their respective packaging.

51) Nestle in its reply has submitted that neither Everyday product is declared as milk in the marketing campaigns nor on the packaging. They have submitted the ingredient list for powdered as well as liquid Everyday but neglected to mention the percentage of SNF and milk fats in it. However the packaging of powdered and liquid Everyday has been examined by the enquiry officers and observed that they reflect the satisfactory proportion of SNF and fats as required by PSQCA. If we look at the packaging of both the products it clearly states the words 'Bana hai mazedar chai k lye' and 'Tea creamer', which means that the product is specifically manufactured to make tea and same has been disclosed on the packing of the product.



- 52) The TVC's of Everyday was also analyzed. It was observed that it clearly indicates that the product can only be used in making tea. The screenshots of the relevant advertisement is as under:



- 53) The undertaking on its website has also made the same assertions¹¹:

NESTLÉ EVERYDAY, prepared according to the NESTLÉ's standards of quality, makes every cup of tea perfect with its special taste. And it's versatile enough for all manners of preparation and palates; mixed tea or separate, light tea or dark, loose grains or teabag... NESTLÉ EVERYDAY gives the same great taste every time. You can also take your pick of powder or liquid, with so many sizes to choose from. Anytime of the day is a good time for tea and nothing says 'taste' better than a love for tea.

- 54) In the light of para 51 to 53 above, it is clear that Nestle is not giving any wrong impression to the general public about their product Everyday that makes them believe that it is not a tea whitener.

ii. SHAKARGANJ FOOD PRODUCTS LIMITED:

- 55) The undertaking has submitted that they are fulfilling all the requirements for every product they are producing and the information provided while marketing these products is true and in accordance with the requirements of PSQCA.
- 56) The undertaking is involved in the manufacturing of both dairy drink and tea whitener. Dairy drink includes Dairy Pure whereas, the tea whitener includes Chaika and Qudrat.

¹¹ http://www.nestle.pk/brands/ambientdairy/nestle_everyday

DAIRY DRINK (DAIRY PURE):

1. DAIRY PURE:

- 57) Shakarganj has not submitted the exact percentage of SNF and fats in Dairy Pure however they alleged that it fulfills PSQCA standards. In contention to their submission they provided the copy of PSQCA license which indicates that their product conforms to PSQCA standards. They also alleged that the packages are clear about the ingredients and the marketing is also in accordance with the quality of this product.

Number. 008516

SCK
Pakistan Standards

Government of Pakistan

Pakistan Standards and Quality Control Authority
Licence for the use of the Pakistan Standard Mark

Agreement No. 595/P-127

Licence No. CML/N-595/2014

M/s. Shakarganj Food Products Ltd.

Address: 4-K.M, Lahore Road, Taranwala

Licence shall be valid from 1-Nov-14 to 31-Oct-15 and renewable as prescribed under the Rules.

Signature: *[Signature]*

Muhammad Yasin Akhtar
DIRECTOR

Place: Lahore

Date: 3-Dec-14

THE FIRST SCHEDULE

PS Mark	Article / Process	Pakistan Standard(s)
1	2	3
	Dairy Drink "Dairy Pure" Brand	PSS-4873/2008(R)

THE SECOND SCHEDULE

Article / Process	Unit	Marking Fee Per Unit	Mode of Payment
1	2	3	4
Dairy Drink "Dairy Pure" Brand	Ex-Factory Price	0.05%	Through Bank Draft Quarterly

- 58) The packaging of the product has been analyzed and it has been observed that it contains the words 'Dairy Drink' as required by PSQCA. There is no recent advertisement of the product however the previous advertisement reveals that the product can be used for many purposes. The disclosures on the website also gives a clear indication that the product is a dairy drink. Some of the extracts are as under:

Sourced from pure milk, 'Dairy Pure' is our wholesome, all-purpose dairy brand that provides price and quality conscious consumers with a premium milk-product at an affordable price.

Have it in your morning tea or make a delicious dessert or even a

plain tall glass, 'Dairy Pure' is sure to make every serving special.



- 59) In the light of para 57 and 58 above it is concluded that the packaging of Dairy Pure is not giving any wrong impression to the general public about the formation of the product. The words Dairy Drink as prescribed by PSQCA are written on the packaging which gives a clear impression that the product is not a milk.

LIQUID TEA WHITENER (CHAIKA & QUDRAT):

1. CHAIKA:

- 60) Shakarganj has submitted that Chaika is a liquid tea whitener and is being marketed in terms of PSQCA standards regarding Liquid Tea Whitener however they have not submitted the exact percentage of SNF and fats in it. The packaging of the product reflects '6.5% fats min' which is in line with the requirement of PSQCA.
- 61) The packaging of the product reflects the statements 'Chai ka asal zaiqa' and 'UHT Liquid Tea Whitener' with the pictures of tea cups on it.



- 62) The TVC of the product also reveals that the product has been advertised as a blend for tea. The website extract also affirms the usage of the product:

Chaika is everyone's favorite to start their day, and there's a reason why. Because it gives your tea the BESHT aroma, the most soothing taste, making a cup of tea the BESHT event of the day.

- 63) In the light of para 60 to 62 above it is concluded that the packaging of Chaika is not giving any wrong impression to the general public about the formation of the product. The words liquid tea whitener and the pictures on the packaging give a clear impression that the product is a blend for tea. The website disclosures and the TVC are also very clear about the usage of the product as tea whitener.

2. QUDRAT:

- 64) During the course of the enquiry the product has been purchased by the enquiry officers in order to analyze its packaging and marketing. The packaging of the product shows satisfactory level of fats and SNF as required by PSQCA.
- 65) The front side of the packaging reflects the brand name 'Qudrat' with an addition of words 'Maza Bemisaal'. The front side of the pack does not indicate the words like milk, dairy drink or liquid tea whitener. However, one side of the packaging indicates the words 'UHT liquid tea whitener' in a very small font.



- 66) Here it is pertinent to mention that Punjab Pure Food Rules, 2011, states that it is mandatory for an undertaking manufacturing Liquid Tea Whiteners to label their product as '*Milk for making tea*' or '*Tea whitener Liquid*' with the insertion of brand or trade name before this phrase in equal uniform size.
- 67) It has been observed that in the absence of proper disclosure on the front side of the packaging it is not possible to understand the nature and purpose of the product. Moreover the product also contains the picture of poured milk with a tea cup and dessert in a bowl which clearly indicates that the product can be used for multi purposes.
- 68) No website disclosures or TVC for the said product was found during the enquiry.
- 69) In light of para 64 to 68 above, it is concluded that the words 'UHT liquid tea whitener' appear in a very small font on the side of the packaging and the front side of the packaging doesn't indicate that it is a liquid tea whitener with the pictures reflecting the multipurpose use of the product. Hence the packaging of the product is capable of giving a wrong impression to the general public about the character, properties, suitability of use and quality of the product and can also give competitive advantage to the undertaking which is a violation of Section 10(1) in terms of Section 10(2)(a) and (b) of the Act.

iii. HALEEB FOODS LIMITED:

- 70) As mentioned above, Haleeb foods are making both dairy drinks and tea whiteners. Dairy drinks includes:
- i. Grow Aur
 - ii. All Max

- 71) Whereas, tea whiteners includes:
i. Tea Max
ii. Dairy Queen

DAIRY DRINKS (GROW AUR & ALL MAX):

1. GROW AUR:

- 72) Haleeb in its reply has submitted that the production of "Gro Aur" has been discontinued for over seven months of the date of the response hence no data was provided for the same. Further the enquiry officers were also not been able to find the product in the market.

2. ALL MAX:

- 73) The packaging and marketing has been analyzed by the enquiry officers the analysis of which is presented below:



- 74) The packaging of the product contains the words 'Dairy Drink' and indicates satisfactory levels of SNF and milk fat as required by PSQCA. The undertaking has not aired any TVC for the said product.

- 75) However, if we go through the disclosures given on the website of the product, it has been observed that the undertaking is marketing its product as an alternative to milk. The relevant extracts of the website are as under¹²:

*Haleeb's All Max is a newly launched dairy beverage made with quality ingredients to fill the needs of mass market consumers. It possesses extra ordinary aroma and taste. All Max can be used for drinking, making delicious desserts, and shakes. **It is very nutritious and safe for drinking as an alternative to loose milk.** All Max is available in 250ml and 1 litre packing.*

- 76) In the light of para 74 & 75 above, it is concluded that the packaging of All Max contained the words 'Dairy Drink' as prescribed under law. However the disclosure on the website of the undertaking is misleading which may give a wrong impression to the general public about the character, properties, suitability of use and quality of the product which appears to be a violation of Section 10(1) in terms is Section 10 (2)(a) & (b) of the Act.

TEA WHITENER (TEA MAX & DAIRY QUEEN):

1. TEA MAX:

- 77) Haleeb foods submitted that Tea Max is a liquid tea whitener comprising of 6.5% milk fats and 4% milk SNF (upto the standard prescribed by PSQCA & Punjab Pure Food Rules, 2011 i.e. minimum 6.5% milk fat or vegetable fat and min 3% Milk SNF).
- 78) Similarly if we go through the packaging of the product the words 'Liquid Tea Whitener' are written on the packaging of the product as desired by Punjab Pure Food Rules, 2011. The packaging has a cup of tea printed which coupled with the promotional statement printed at the head of the packaging i.e. "*naya behtar maza, banaye zayada cup*", which further makes it clear that the product is a liquid tea whitener. In addition to this the packaging under the ingredients expressly states that the product is "*not a milk replacement for infants*".

¹² <http://haleebfoods.com/brands/consumer-brands/all-max/>



- 79) The undertaking has not aired any TVC for the said product but the disclosures on the website reveal that the product has been advertised as a blend for tea. Some of the relevant extracts are as under:

TEAMAX provides its consumers with an extraordinary tea drinking experience that lifts up their mood with every sip. While attaining recognition as a high quality brand in recent times, it pleases all tea lovers through its unique taste and optimum economy with the smallest pack size of 125 ml capable of making two cups of tea.

- 80) In the light of para 77 to 79 above it is concluded that the packaging of Tea Max is not giving any wrong impression to the general public about the formation of the product. The words liquid tea whitener and the pictures on the packaging gives a clear impression that the product is a blend for tea. The website disclosures are also very clear about the usage of the product.

2. DAIRY QUEEN:

- 81) Dairy Queen is also a liquid tea whitener. Haleeb Foods failed to provide the limits of fats and SNF in Dairy Queen but submitted that it has lower content of milk solids other than fat to make the price more affordable. In the absence of their submission it is not possible to check the percentage of SNF and fats with the one provided by PSQCA.
- 82) The product is available in two types of packaging, soft plastic packaging and tetra pack. If we go through them the soft plastic indicates the words 'Munasib qeemat mein chaye k leye behtareen' whereas the tetra pack doesn't reveals any statement which disclose the fact that it is a tea blend and not a milk.



- 83) The undertaking has not aired any TVC regarding this product. However only the website indicates that the product can be used for making tea. Relevant extracts are reproduced below:

Dairy Queen is a specialized tea creamer that has won millions of hearts by offering rich taste and aroma to all the tea lovers. It brings sheer delight to the consumers offering the best tea drinking experience with a great value for money.

84) In the light of para 81 to 83 above it is concluded that the undertaking failed to provide a satisfactory data regarding the percentage of SNF and fats in Dairy Queen. It appears that the packaging of the tetra pack doesn't indicate that it is a liquid tea whitener and hence it is capable of giving a wrong impression to the general public about the character, properties, suitability of use and quality of the product which is a violation of Section 10 (1) in terms of Section 10(2)(a) and (b) of the Act.

iv. NOON PAKISTAN LIMITED:

85) As mentioned in para 23 above, Noon Pakistan Limited were involved in the manufacturing of a dairy drink as well as a tea whitener.

Dairy drink includes: Dairy Rozana.

86) Whereas, tea whitener includes: Chai Mix.

DAIRY DRINKS (DAIRY ROZANA):

1. DAIRY ROZANA:

87) Dairy Rozana was a Dairy Drink manufactured by Noon Pakistan Limited. According to the submissions made in para 24 above, the undertaking has stopped the production of Dairy Rozana and therefore, it is no longer available in the market. However, it has been observed that the enquiry officers have found the product in the market during their survey in the course of enquiry. The last packaging available in the market doesn't contain the words 'Dairy Drink' as prescribed by PSQCA and in the absence of such disclosure, it is not possible to distinguish between a milk and a Dairy Drink.



- 88) No TVC, advertising campaign or website disclosures are observed for the said product.
- 89) In light of para 87 & 88 above, it has been concluded that the words 'Dairy Drink' were missing on the packaging of the discontinued brand Dairy Rozana which is capable to mislead the consumer into believing that the product is a milk. Thus the packaging of 'Dairy Rozana' is not only misleading in terms of Sec 10 2(b) of the Act but is also capable of harming the business interest of other undertakings in terms of Section 10 (2) (a) of the Act.

2. TEA WHITENER (CHAI MIX):

- 90) Chai Mix is the product being produced in compliance with PSQCA. The undertaking in this regard has submitted the satisfactory percentage of fats and SNF in the product (Fats= 6.50% ± 0.05% SNF 5.725% ± 0.125%) which is in accordance with the standards provided by PSQCA. They also alleged that the product is marketed as tea whitener and not as milk.
- 91) If we look at the packaging of the product it also reveals the disclosure of words 'Dairy Whitener for Tea' with a picture of tea cup on the packaging. No TVC or website information is available for the product.



- 92) In light of para 90 & 91 above it is concluded that the packaging of Chai Mix is not giving any wrong impression to the general public about the formation of the product. The words dairy whitener for tea and the pictures on the packaging gives a clear impression that the product is a blend for tea.

v. **ENGRO FOODS LIMITED:**

93) As mentioned above, Engro Foods is making both dairy drinks and tea whiteners. Dairy drinks includes:

i. Omung

94) Whereas, tea whiteners includes:

i. Tarang

ii. Tarang Elaichi

DAIRY DRINKS (OMUNG):

1. **OMUNG:**

95) Engro Foods submitted that Dairy Omung is registered with PSQCA which has been reduced to the prescribed level of milk fat and milk SNF. The license obtained from PSQCA for the use of their mark has also been attached by the undertaking but the validation date is from 26-05-14 to 25-05-15 . It is pertinent to mention here that the packaging of Omung doesn't reflect the amount of fats in it.

Number: 001066

Pakistan Standards and Quality Control Authority
Licence for the use of the Pakistan Standard Mark

Licence No. CSDC/L-163/2014
M/s. M/S. ENGRO FOODS LIMITED
Address: 8-KM Pakpattan Road, Saliwal
Licence shall be valid from 26/05/2014 to 25/05/2015 and renewable as prescribed under the Rules.

Signature: [Signature]

DIRECTOR
Place: Karachi
Date: 28th August, 2014

THE FIRST SCHEDULE		
PS Mark	Article / Process	Pakistan Standard(s)
1	2	3
1	DAIRY DRINK 'DAIRY OMUNG' BRAND	PS-4873-2008

THE SECOND SCHEDULE			
Article / Process	Unit	Marking Fee Per Unit	Mode of Payment
1	2	3	4
DAIRY DRINK 'DAIRY OMUNG' BRAND	Ex-Factory Price	@ 0.05%	Through Bank Draft Quarterly

96) With regard to the labeling on the packaging, it has been observed that the product is being labeled as 'Dairy Drink' written in the first line of the product label, above the Dairy Omung brand logo which is also in conformity with the direction of PSQCA.



- 97) However if we go through the TVC aired by the undertaking, it has been observed that the product has been advertised as a pure drink with a slogan 'Qudrat sa shafaaf', which means 'Pure as nature'. The relevant portion of the TVC is reproduced below;

*Bura lagta hai na..
ghar k mamlay mein koi bahar wala apni melaye...
Phir es khuda ki naymat mein melaawat kyun??
Esiley Dairy Omung hai milawat se paak, ghezayat se bharaa..
Dairy Omung.. Qudrat sa Shafaaf !*

- 98) Here it is important to recall the definition of milk as provided by Punjab Pure Food Rules, 2011¹³:

“Milk, means the normal, clean and pure secretion obtained from the mammary glands of a healthy cow, buffalo, goat, camel or sheep (halal milk animals), whether boiled, homogenized, pasteurized, sterilized or UHT and includes standardized, reconstituted milk. Milk shall contain not less than 34 percent of milk protein in milk solids other than milk fat and Lactose not less than 4.6 percent in milk solids other than milk fat. It shall be free from colostrum. Milk shall not contain any added water, permitted food additive, other added substances, traces of antibiotic substance and hormonal residue.”

¹³ Milk, Punjab Pure Food Rules, 2011, Appendix II, Milk and Milk Products

- 99) After going through the definition of milk, it is clear and obvious that milk is a pure and natural drink. Although Dairy Drink as defined by PSQCA is also free from any added non-dairy ingredients except the permitted food additives and nutrient supplements but it is not as pure as milk. Moreover, Dairy drink contains a reduced proportion of milk fat and milk SNF and thus it is different from milk which is actually pure and natural.
- 100) For the purposes of Section 10 of the Act it is very important to view the advertisement as a whole and to consider the net general impression a consumer can draw after going through the advertisement. The advertisement of Dairy Omung doesn't compare it with other dairy drinks but compares the product with the loose milk supplied at the door with the words "... *Phir es khuda ki naymat mein melaawat kyun?? Esileye Dairy Omung hai milawat se paak, ghezayat se bharaa..*".
- 101) In light of para 95 to 100 above, it is concluded that the packaging of the product doesn't reflect the amount of fats in it as required by PSQCA. The advertisement as a whole gives a firm impression that Omung is milk and not a Dairy Drink. Moreover, the disclosure on the website of the undertaking also reveals that Dairy Omung is an alternative to loose milk.

Let's drink to a purer life. The days of a pure, nutritious alternative to loose milk being out of the common man's reach are over. Dairy Omung carries all the enriching qualities and purity of milk and perfectly fits the budget of humble Pakistani households¹⁴.

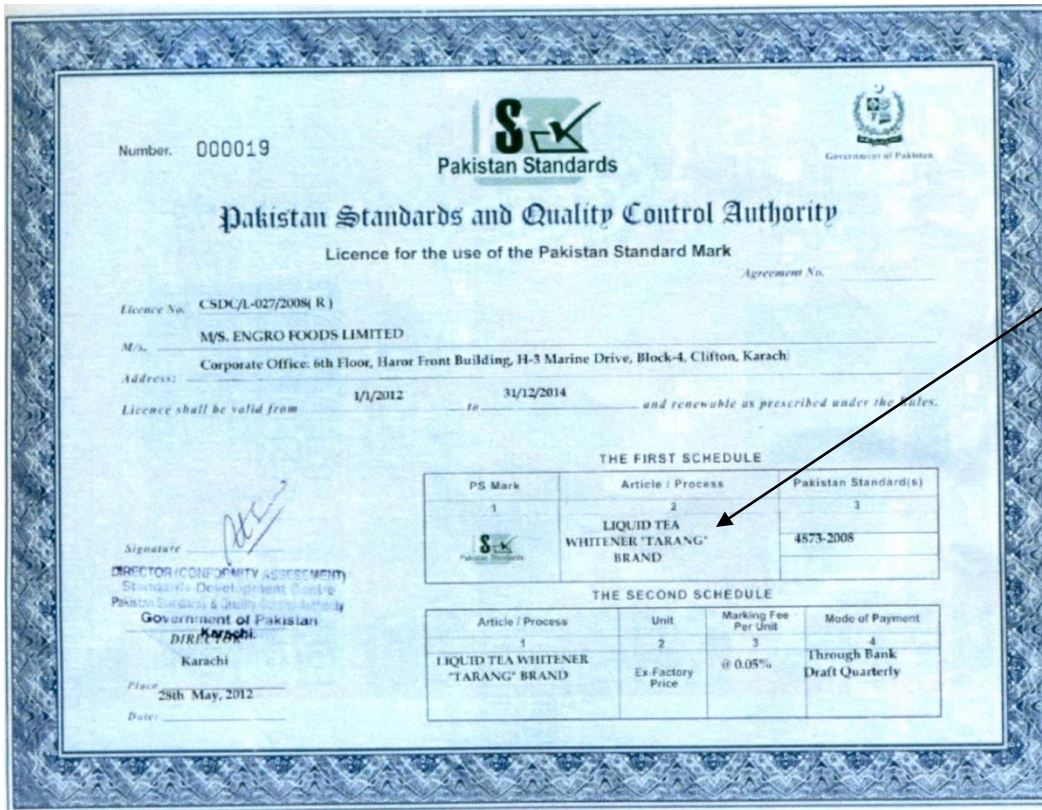
- 102) Thus the advertisement of the undertaking is not only deceiving the consumer about the character, properties, suitability of use and quality of their product but is also capable of harming the business interest of other undertakings and, *prima facie*, violates Section 10 (1) in terms of Section 10 (2) (a) & (b) of the Act.
- 103) The undertaking at the same time is also involved in the wrong comparison of their Dairy Drink with loose milk thus, *prima facie*, violates Section 10 (1) in terms of Section 10 (2) (c) of the Act.

TEA WHITENER (TARANG & TARANG ELACHI):

1. TARANG:

- 104) The undertaking upon enquiry has submitted that Tarang is a liquid tea whitener which is registered with the PSQCA. It contains minimum 6.5% milk fat or vegetable fat, minimum 3% milk solids other than fat and other permissible food additives. The license obtained from PSQCA for the use of their mark has also been attached but its validation date was December 31, 2014.

¹⁴ http://www.engrofoods.com/dairy_omung.html



105) If we look at the packaging of the product it clearly states the words 'Liquid Tea Whitener' with the cup of tea printed on the front side of the packaging.



- 106) The advertising campaigns and the TVC of Tarang use the tagline, “Chai ka sahi jor” which implies that the product is a blend for tea. Moreover, website also reveals the same:

Tarang is a specialized tea creamer that makes the perfect cup of tea guaranteed to transport tea-lovers into a state of sheer bliss any time of the day.

- 107) In the light of para 104 to 106 above it is concluded that the packaging of Tarang is not giving any wrong impression to the general public about the formation of the product. The words liquid tea whitener and the pictures on the packaging gives a clear impression that the product is a blend for tea. The website disclosures are also very clear about the usage of the product.

2. **TARANG ELACHI:**

- 108) Tarang Elachi is a very new brand of Liquid Tea Whitener recently introduced by Engro therefore the undertaking was not asked about the formation and marketing of Tarang Elachi during the enquiry. However the packaging and the advertising campaign (TVC) clearly indicates that the product is the Liquid Tea Whitener and can only be used in combination with tea.



- 109) The disclosures on the website also reveals that the product is a Liquid tea whitener¹⁵.

¹⁵ <http://www.engrofoods.com/tarang-elaichi.html>

*Tarang Elaichi to grant an ultimate indulgence of traditional tea.
Tarang Elaichi is a liquid tea whitener that has been adorned with
the traditional delicacy of Cardamom that enhances the tea's
flavour and aroma to have a charm of its own.*

- 110) In the light of para 108 & 109 above it is concluded that the packaging of Tarang Elachi is not giving any wrong impression to the general public about the formation of the product. The words liquid tea whitener and the pictures on the packaging gives a clear impression that the product is a blend for tea. The website disclosures are also very clear about the usage of the product.

F. CONCLUSION:

- 111) After going through the analysis, we the enquiry officers, have concluded the following:
- 112) Nestle is not giving any wrong impression to the general public about their product Everyday that might make them believe that it is not a tea whitener.
- 113) Shakarganj's product 'Dairy Pure' which is a Dairy Drink gives a clear impression that the product is not a milk. Similarly their product Chaika which is a tea whitener contains the words 'liquid tea whitener' and the pictures on the packaging give a clear impression that the product is a blend for tea. The website disclosures and the TVC are also very clear about the usage of the product as tea whitener.
- 114) Shakarganj is also making another tea whitener 'Qudrat'. For 'Qudrat' it has been concluded that the words 'UHT liquid tea whitener' appear in a very small font on the side of the packaging and the front side of the packaging doesn't indicate that it is a liquid tea whitener with the pictures reflecting the multipurpose use of the product. Hence the packaging of the product is capable of giving a wrong impression to the general public about the character, properties, suitability of use and quality of the product and can also give competitive advantage to the undertaking which is a violation of Section 10(1) in terms of Section 10(2)(a) and (b) of the Act.
- 115) Haleeb Foods Limited is making both dairy drinks and tea whitener. Dairy drink includes 'Grow Aur' and 'All Max'. Whereas, tea whiteners includes 'Tea Max' and 'Dairy Queen'. The conclusion for each of their product is as follow:
- 116) The production of 'Grow Aur' was discontinued for over seven months of the date of the response. The enquiry officers were also not been able to find the product in the market during their survey.
- 117) 'All Max' packaging contained the words 'Dairy Drink' as prescribed under law. However the disclosure on the website of the undertaking is misleading which may give a wrong impression to the general public about the character, properties, suitability of use and quality of the product and also provide the undertaking a competitive advantage over

other undertakings in violation of Section 10 (1) in general and in particular Section 10 (2)(a) & (b) of the Act.

- 118) 'Tea Max' is not giving any wrong impression to the general public about the formation of the product. The words liquid tea whitener and the pictures on the packaging gives a clear impression that the product is a blend for tea. The website disclosures are also very clear about the usage of the product.
- 119) For Dairy Queen the undertaking failed to provide satisfactory data regarding the percentage of SNF and fats. The packaging of the tetra pack doesn't indicate that it is a liquid tea whitener and hence is capable of giving a wrong impression to the general public about the character, properties, suitability of use and quality of the product which is prohibited under Section 10 (1) in terms of Section 10 (2) (b) of the Act and can also give competitive advantage to the undertaking which is prohibited under Section 10 2(a) of the Act.
- 120) Noon Pakistan Limited is making 'Dairy Rozana' (Dairy Drink) and 'Chai Mix' (Tea whitener). Although the undertaking has submitted that they discontinued their brand 'Dairy Rozana' but the enquiry officers found the same during their survey in the market. For Dairy Rozana it has been concluded that the words 'Dairy Drink' were missing on the packaging of the discontinued brand which is capable of misleading the consumers into believing that the product is a milk. Thus the packaging of 'Dairy Rozana' is not only misleading in terms of Sec 10(2)(b) of the Act but is also capable of harming the business interest of other undertakings making milk in terms of Section 10 (2)(a) of the Act.
- 121) Whereas, the packaging of Chai Mix is not giving any wrong impression to the general public about the formation of the product. The words dairy whitener for tea and the pictures on the packaging gives a clear impression that the product is a blend for tea.
- 122) Engro Foods is making Omung (Dairy Drink). The advertisements of 'Omung' as a whole gives a firm impression that Omung is a milk and not a Dairy Drink. Moreover, the disclosure on the website of the undertaking also reveals that Dairy Omung is an alternative to loose milk. Thus the advertisement of the undertaking is not only deceiving the consumer about the character, properties, suitability of use and quality of their product but is also capable of harming the business interest of other undertakings and, *prima facie*, violates Section 10 (1) in terms of Section 10 (2) (a) & (b) of the Act. The undertaking at the same time is also involved in the wrong comparison of their Dairy Drink with loose milk thus, in terms of Section 10 (2) (c) of the Act.
- 123) Engro Foods is also making Tarang & Tarang Elachi (tea whiteners). For both the products the packaging and the TVC is not giving any wrong impression to the general public about the formation of the product. The words liquid tea whitener and the pictures on the packaging gives a clear impression that the product is a blend for tea. The website disclosures are also very clear about the usage of the product.

G. RECOMMENDATION:

- 124) It is evident that Shakarganj Foods Products Limited, Haleeb Foods Limited, Noon Pakistan Limited and Engro Foods Limited are, *prima facie*, engaging in deceptive marketing practices in violation of Section 10 (1) of the Act. 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) and are also distributing information to consumers that lacks reasonable basis about the character, properties and quality of their product in terms of Section 10 (2) (b) of the Act.
- 125) Whereas, Engro Foods Limited in advertising their product 'Omung' is also *prima facie* involved in the false and misleading comparison of products in terms of Section 10 (2) (c) of the Act.
- 126) 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. Hence, it is in the interest of the public that the undertakings should be stopped from 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. It is recommended that a show cause notice be served to Haleeb Foods Limited, Noon Pakistan Limited and Engro Foods Limited for, *prima facie*, violation of Section 10 of the Act.

Maliha Quddus
Deputy Director (C&TA)

Marryum Pervaiz
Deputy Director (OFT)

