

# **COMPETITION COMMISSION OF PAKISTAN**

## **ENQUIRY REPORT**

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

**IN THE MATTER OF COMPLAINT FILED AGAINST TELENOR PAKISTAN  
(PRIVATE) LIMITED FOR DECEPTIVE MARKETING PRACTICES**

**BY**

**FAIZ-UR-REHMAN & FATIMA SHAH**

**June 21, 2016**

## A. BACKGROUND

1. Mr. Fatim Arbab (hereinafter referred to as the “**Complainant**”) filed a complaint with the Competition Commission of Pakistan (the “**Commission**”), against M/s Telenor Pakistan (Private) Limited (hereinafter referred to as the “**Respondent**”) for alleged violation of Section 10 of the Competition Act, 2010 (the “**Act**”), i.e., Deceptive Marketing Practices.
2. The Complainant alleged that the Respondent is an undertaking involved in distribution of false and misleading information while dealing with customers that lack a reasonable basis, related to character, properties, or quality of its services which is capable of deceiving the consumers and harming the business interest of other undertakings in the similar business. It has been alleged that the conduct of the Respondent, *prima facie*, amounts to deceptive marketing practices in terms of Section 10 of the Act.
3. Keeping in view the foregoing, the Commission initiated an enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Mr. Faiz ur Rehman, Assistant Director, and Ms. Fatima Shah, Management Executive, as the enquiry officers (the “**Enquiry Committee**”). The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations, *inter alia*, on the following:

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

## B. COMPLAINT

4. The Complainant is a citizen of Pakistan, who submitted in his complaint that the recent advertisement launched by Telenor in electronic media has made the claim, “...**\*Pakistan ka sab se behtareen network - Telenor**”, without a reasonable basis which is a violation of Section 10 of the Act, i.e., Deceptive Marketing Practices. It was further submitted that such practices not only result in consumer injury but also cause harm to business interests of competing telecom operators.
5. It was presented that Pakistan Telecommunication Authority (PTA) is the licensing authority and is a sector specific regulator that conducted its surveys through which it indicates the position of any operator in terms of quality of service and health of operators’ networks. However, as per PTA’s survey report, which displays performance of telecom networks with respect to various key performance indicators (KPIs), Telenor has not been given the status of being the best telecom network in the sector. It was, therefore, presented

that by making such a claim without a reasonable basis is capable of deceiving telecom customers and harming business interests of telecom operators.

6. The Complainant stated that according to the Commission's guidelines, any telecom operator while making claims in the process of marketing its services pertinent to, *inter alia*, its performance, must have a reasonable basis prior to disseminating such claims. Whereas, in the said advertisement the Respondent has made the claim of being "*Pakistan ka sab se behtareen network - Telenor*" (translated as, 'Pakistan's best network') without cogent evidence, which has the capability of enticing the consumer to opt for their services.
7. It was, therefore, submitted that the Commission may investigate the case under the provisions of Section 10 of the Act and stop the Respondent from distributing false and misleading information in the process of advertising.

## C. CORRESPONDENCE WITH THE RESPONDENT

### I. RESPONDENT'S REPLY

8. The Respondent is owned by the Telenor Group which provides voice, data, content, and communication services internationally. It acquired the GSM license in 2004 and began commercial operations in Pakistan on March 15, 2005. The complaint was forwarded to the Respondent for reply/comments to the complaint along with the supporting documents/evidence for clarification against the aforementioned complaint.
9. The Respondent via its letter dated April 25, 2016, submitted a reference of the order dated 16.01.2014, pertinent to WP.42/2014 (the '**Writ Petition**'). According to the said order, the Honorable Islamabad High Court restrained the Commission from passing any final order. The said Writ Petition was pertinent to the subject of legitimacy of concurrent jurisdiction managed by the Commission and PTA while dealing with the matters of consumer interest in the telecom sector.
10. It was presented that the said Writ Petition was also pursuant to the matter of deceptive marketing practices. According to the Writ Petition, the actions of the Commission with reference to the said matter were challenged. Therefore, it was submitted, that no further proceedings are undertaken pertinent to the matter currently under consideration.
11. With respect to the issue of presenting cogent evidence as a proof for their claim, the Respondent stated that the claim, "*Pakistan ka sab se behtareen network*", does not fall in the ambit of Section 10 of the Act which prohibits deceptive marketing practices as the claim does not result in distribution of false and misleading information in the process of advertising which may cause consumer injury or harm business interests of its competitors.

12. It was submitted in the reply that the term “*behtareen*” is synonymous to English words such as “acme”, “best”, “excellent”, “elite”, “eximous”, “perfect”, etc., and denotes Urdu terms such as “khoobi se” which means “with quality” or “well done”. It was therefore submitted that due to the possibility of various inferences of the term “*behtareen*”, the statement alludes a broad statement which is not quantifiable in a narrow domain which, *inter alia*, is dependent on factors such as market share, call connection, service accessibility, signal strength, etc. Hence, it was presented, that the Respondent is not involved in distribution of false and misleading information as Telenor, pertinent to its services, is excellent or of good quality with respect to various characteristics.
13. It was further presented that due to the broad inferences that can be made to the Urdu word, “*behtareen*”, the Respondent’s claim does not lead to deceptive marketing practices. It was further submitted that nevertheless, the Respondent’s services are of highest quality in several performance indicators such as call connectivity, signal strength, etc., as per Quality of Service survey conducted by PTA in Islamabad, Rawalpindi, and Peshawar. The said survey was submitted by the Respondent.
14. The Respondent reiterated that in fact, the Commission in its order, “In the Matter of Complaint Filed by Reckitt Benckiser Pakistan Ltd. Against M/s S.C. Johnson & Son Pakistan Limited for Deceptive Marketing Practices”, held that “*The examples quoted by the Respondent further strengthens our view as the statement ‘Best in Town’ or ‘Best of the Best’ are more general in nature and cannot be quantified*”. Therefore, it was submitted that even if the term “*behtareen*” is translated as “Best”, the claim persists to be a broad and hence, an unquantifiable term.
15. It was finally submitted that currently there is no mechanism to determine the ranking or status of the telecommunication service providers as the best or perfect one and therefore, the Respondent’s advertisement was not misleading in any manner. And that the adjudication of such rankings would rest with PTA and not the Commission.

#### D. ANALYSIS

16. As mentioned in Para 3. *ibid* the mandate of this enquiry is to determine the following:

***“Whether the allegations leveled against the Respondent under the complaint constitutes a prima facie violation of Section 10 of the Act?”***

17. The cellular network industry of Pakistan is primarily based on five major cellular network operators which includes Pakistan Mobile Communications Limited (PMCL)-Mobilink, Pakistan Telecom Mobile Limited-Ufone, Telenor Pakistan Private Limited-Telenor, Warid Telecom-Warid, and CMPak Limited-Zong. The market is divided amongst these competitors with **29.21%, 15.23%, 28.40%, 8.32%, and 18.83%** market shares

respectively. It is one of the most competitive and innovative industries in Pakistan which has experienced major growth rates and attracted high foreign direct investment in the previous decade. This sector has PTA as its sector specific regulator.

18. **The Commission's mandate:** Prior to proceeding towards the actual matter of the enquiry report, it is necessary to address the Respondent's contentions that pursuing the Respondent in regard to violation of Section 10 of the Act is not the Commission's mandate, rather it is the mandate of PTA being the sector specific regulator. In this reference, it is presented that it is the role and mandate of the Commission to ensure that competitive forces are unhindered in all spheres of commercial and economic activity in order to enhance economic efficiency and to protect consumers from anticompetitive behavior. Furthermore, Section 10 of the Act prohibits all the undertakings from entering into deceptive marketing practices, which for the ease of understanding is reproduced below:

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

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

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

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

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

The Act, therefore, defines the term “undertaking” as:

*(q) “undertaking” means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other 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 or undertakings;*

Above excerpts of the Act demonstrates that the law does not restrict the domain of the Commission, in any way, if and when violation of the Act is concerned.

19. Moreover, it is also pertinent to note that the Commission in the past has also passed orders against M/s China Mobile Pak Limited (CMPak) and M/s Pakistan Telecom Mobile Limited (Ufone) for violation of Section 10 of the Act which reinstates the fact that the Commission is responsible for addressing competition issues in every sector of the market. Furthermore, the “Deceptive Marketing Guidelines for Telecom Sector” were quoted by the Respondent itself which further reinforces the fact that the telecom sector, irrespective of the presence of PTA, comes in the ambit of the Act as far as its violation is concerned.

20. It is reiterated that the Commission is not responsible for a single specific sector in the market rather, it is responsible for ensuring fair competition in all markets. Where PTA and various other sector regulators such as National Electric Power Regulatory Authority (NEPRA), Oil and Gas Regulatory Authority (OGRA), etc., are responsible for all aspects for their respective sectors, the Commission has the mandate to regulate and ensure ‘only’ competition aspects in ‘all’ markets. Furthermore, most of the undertakings that have been pursued by the Commission belong to a certain sector which has its own sector regulator as well, for example, Pakistan State Oil, etc. Therefore, presence of a sector specific regulator does not restrict the ambit of the Commission pertinent to its specific mandate in any way.
21. Moreover, with respect to the Writ Petition referred to by the Respondent, it is presented that the Respondent has relied upon an interim order passed in a pending W.P. No 42/2014. In this context, it is submitted that the order referred to is neither relevant nor has any nexus to the issue at hand raised by the Commission which attracts the provisions of Section 10 of the Act. Furthermore, the contents of order relied upon do not restrain the Commission to initiate a fresh inquiry pertinent to a violation of any provision of the Act. Therefore, the Commission has complete and unrestricted authority to pursue this case if it falls in the scope of the Act.
22. In this regard, it is also relevant to point out that the enquiry committee also tried to approach the Pakistan Telecommunication Authority (PTA) to have their input through a letter dated May, 30, 2016 , but in spite of a reminder issued on June, 08, 2016 the regulatory authority did not furnish its reply.
23. **A ‘puffery statement’ or a ‘claim’:** For the purpose of this enquiry report, it is necessary to differentiate between a ‘claim’ and a ‘puffery statement’. The Federal Trade Commission (FTC) in its policy note on deception <sup>1</sup> opines regarding puffery as:

*The term "Puffing" refers generally to an expression of opinion not made as a representation of fact. A seller has some latitude in puffing his goods, but he is not authorized to misrepresent them or to assign to them benefits they do not possess. Statements made for the purpose of deceiving prospective purchasers cannot properly be characterized as mere puffing. Wilmington Chemical, 69 F.T.C. 828, 865 (1966)*

The FTC on this matter states further<sup>2,3</sup>:

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<sup>1</sup> [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf)

<sup>2</sup> <http://docslide.us/documents/puffery-in-advertising.html>

<sup>3</sup> “The Great American Blow-Up: Puffery in Advertising and Selling” By Ivan L. Preston

*“[Puffery is a] term frequently used to denote exaggerations reasonably to be expected of a seller to the degree of quality of his product, the truth or falsity of which cannot be precisely determined...[It is a statement that] is either true, or it is false; and accordingly such a determination must be made.”*

24. The Commission has also in the past issued “Deceptive Marketing Guidelines For The Telecom Sector”<sup>4</sup>, which defines puffery as:

### **3.10 Puffery**

*Puffery has been defined as an exaggerated statement that is reasonably to be expected from an undertaking selling products or services as to the degree of quality of his product, the truth or falsity of which cannot be precisely determined. Generally “puffery” is intended to base on an expression of opinion not made as a representation of fact. Although puffery will generally not be regarded to violate Section 10 of the Act, however, it may be misleading where facts are wrong or distorted.*

Hence, according to the Commission’s guidelines as well, a statement would be considered puffery only if the falsity of it cannot be determined. Which, in this case, due to presence of quantifiable KPIs, can be determined for the Respondent.

25. The Respondent in its reply submitted several translations to the term “*behtareen*” used in its advertisement. The Respondent claimed in its reply that the term “*behtareen*” is a puffery word and the Respondent’s statement, “*Pakistan ka sab se behtareen network-Telenor*”, is hence merely a general statement that cannot be quantified. Therefore, it was presented that the Respondent is not in violation of Section 10 of the Act.
26. For the purpose of this enquiry report, the Enquiry Committee will be translating “*behtareen*” as “best”. In most cases, as highlighted by the Respondent in para 14 *ibid*, the term “best” is considered puffery, however, this is not a rule. In one of its cases, National Advertising Division (NAD) in this reference states<sup>5</sup>:

*“If the use of superlatives is vague and fanciful and suggests no objective measure of superiority, then the claim is likely to be puffery. If, on the other hand, adjectives such as ‘best’ or greatest are accompanied by specific attributes which are likely*

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<sup>4</sup>[http://www.cc.gov.pk/images/Downloads/guidelines/deceptive\\_marketing\\_draft\\_guidelines\\_for\\_telecom\\_sector.pdf](http://www.cc.gov.pk/images/Downloads/guidelines/deceptive_marketing_draft_guidelines_for_telecom_sector.pdf)

<sup>5</sup> “Persuasion Ethics Today” edited by Margaret Duffy and Esther Thorson. Page 145

to suggest that product is comparatively 'better' in some recognizable or measurable way, the defense of 'puffery' is unlikely to prevail."

27. Therefore, the justification that using the term "best" automatically refers to a puffery statement is not a valid one and in fact, to distinguish puffery from claim, the following criteria has to be fulfilled<sup>6,7</sup>:

- a) Would a reasonable buyer be justified in relying on the claim?
- b) Can the challenged statement alone be proven true or false?<sup>8</sup>

28. Applying these conditions on the Respondent's statement, various observations can be made. First of all, the Respondent has defined the scope of the telecom networks by claiming that it is the best telecom network in 'Pakistan'. Evaluating the telecom sector of Pakistan, there are only five telecom operators and hence, it is easy to determine which one of them is actually the best one. Therefore, by declaring itself to be the best telecom network in Pakistan, a reasonable consumer would be justified to accept this statement. There are only five telecom networks in the market and as opposed to various puffery statements, such as "*Best in the world*", the Respondent's advertisement does not seem like an exaggerated representation of the facts and is, in fact, fairly believable.

29. Furthermore, as submitted by the Complainant and evaluated by the Enquiry Committee, distinct and measurable KPIs are available pertinent to performance of various telecom networks, such as 2G, 3G, and 4G KPIs as well as other indicators such as signal strength, call connectivity, etc. Evaluation of these KPIs can be made to determine as to which telecom network is the best service provider in the market.

30. This argument is further reinstated by the Commission's order held in the matter of Complaint Filed By Reckitt Benckiser Pakistan Ltd. Against M/S S.C. Johnson & Son Pakistan Limited For Deceptive Marketing Practices, according to which<sup>9</sup>:

*9. We note that the claim "No.1 in Pakistan" is not a general assertion. The examples quoted by the Respondent further strengthens our view as the statement 'Best in Town' or 'Best of the Best' are more general in nature and cannot be quantified. However, the statement 'No. 1 in Pakistan' is a quantifiable and specific statement, which describes specific characteristic.*

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<sup>6</sup> <http://www.ftcguardian.com/articles/your-failure-to-substantiate-ad-claims-causes-the-ftc-to-freeze-your-bank-accounts/>

<sup>7</sup> [http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2012\\_food\\_supplements\\_2n\\_d\\_annual\\_cle\\_wrkshp/2012\\_aba\\_panel3\\_the\\_worlds\\_most\\_trusted.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2012_food_supplements_2n_d_annual_cle_wrkshp/2012_aba_panel3_the_worlds_most_trusted.authcheckdam.pdf)

<sup>8</sup> <http://docslide.us/documents/puffery-in-advertising.html>

<sup>9</sup> [http://www.cc.gov.pk/images/Downloads/reckitt\\_final\\_order\\_20\\_01\\_2012.pdf](http://www.cc.gov.pk/images/Downloads/reckitt_final_order_20_01_2012.pdf)



We cannot accept that either “No. 1” or “Pakistan” in any manner conveys a general impression towards the consumers.

20. Moreover, with respect to the claim, “No. 1 in Pakistan” it would be helpful to refer to case of Nestle USA (Nescafe Frothe cappuccino), Report #4263, NAD Case Reports (Jan 2005); wherein the claim “Nescafe delivers brand credibility as the world’s #1 coffee brand” was under review. It was held that the claim used in the advertisement by Nescafe was quantifiable; as it could be measured and defined. The statement was termed as a claim and not “puffery”.

31. Therefore, as mentioned earlier, since the claim of the Respondent is quantifiable and measurable, it does not qualify as a general statement and hence a puffery statement. The Respondent’s claim is in fact an absolute claim that requires a reasonable basis. The Respondent’s statement of being the best telecom network can also be, therefore, proven true or false and it further reinstates the fact that a reasonable consumer is likely to believe this statement. Hence, it can be concluded that taking the aforementioned conditions into consideration and comparing them with the Respondent’s advertisement, the term ‘Best’ or “*Behtareen*” in this case is an absolute claim rather than merely being a puffery term. Therefore, the Respondent’s advertisement is actionable if proven to be in violation of Section 10 of the Act.
32. **Pakistan’s Best Network:** This, therefore, brings us to determine whether the Respondent really is the best network in Pakistan. In this reference, a research conducted by UMR Research for New Zealand Commerce Commission titled, “Competition for Business Customers in the Mobile Industry: A Report for the Commerce Commission”, elucidates on how a network can be rated as the best one. This research has associated various factors in determining a network’s rating, out of which, the “*very important services*” comprise of; Reliable Coverage, Customer Service, Competitive Pricing, Good Invoicing, and Bundle Solutions.<sup>10</sup>
33. Furthermore, a study titled “*Service Quality perception of cellular phone service in India: a comparison between Male and Female*”<sup>11</sup> took the variables, Pricing, Reliability, Perceived Network Quality and Convenience as determinants of service quality. Whereas the research study titled “*Effects of Deceptive Advertising on Consumer Loyalty in Telecommunications Industry in Pakistan*”<sup>12</sup> has defined good quality service using the four variables i.e. Call Charges, Network Coverage, Network Quality, and Customer Service.

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<sup>10</sup> “Competition for Business Customers in the Mobile Industry”: December 2015, pg. 31-32

<sup>11</sup> “Service Quality perception of cellular phone service in India: a comparison between Male and Female”: Volume 5, Issue 8 (August, 2015). International Journal of Research in IT & Management.

<sup>12</sup> [https://mpra.ub.uni-muenchen.de/34756/1/MPRA\\_paper\\_34756.pdf](https://mpra.ub.uni-muenchen.de/34756/1/MPRA_paper_34756.pdf)

34. Therefore, keeping in view the aforementioned studies and taking into consideration the available data, the Enquiry Committee also ventured to evaluate the Respondent’s performance versus its competitors’ performance based on indicators that represent the quality of services provided by various telecom operators *inter alia* “Signal Strength”, “Call Completion Ratio”, “SMS Success Rate”, “End to End Delivery Time”, etc.
35. As mentioned earlier, the data pertinent to service quality will be analyzed to make the classification as to which mobile network is rated as the “best” in Pakistan. For this purpose, the Enquiry Committee had two submissions, one from the Complainant and the other from the Respondent. The Complainant submitted “Cellular Mobile Operators’ (CMO) (2G/3G/4G) Quality of Service (QoS) Survey Results–2015”<sup>13</sup> whereas the Respondent presented “Mobile Data Speeds in Pakistan by PTA Survey”<sup>14</sup>. Both will be analyzed and discussed below.
36. The Complainant submitted the CMO’s (2G/3G/4G) QoS Survey Results–2015, which discusses in detail the various aspects of service provision, such as 2G, 3G and 4G services provided by each CMO and their respective quality which is further comprised of various components. Below is the result of performance of relevant components of 2G services provided by each CMO. 2G services includes Voice and SMS services. The quality of each of these services is based on further KPIs, i.e., Network Downtime, Grade of Service, Service Accessibility, Call Connection Ratio, End to End Speech, and Inter System Handover of CS Voice that represent quality of Voice services. Whereas, quality of SMS services is defined by KPIs such as Success Rate and End to End Delivery Time. The results are presented below:

CMO’s (2G/3G/4G)QoS SURVEY RESULTS - 2015									
Overall Results									
a. 2G KPIs									
Company	Voice KPIs							SMS KPIs	
	Network Downtime (Threshold: < 1%)	Grade of Service (Threshold: ≤ 2%)	Service Accessibility (Threshold: > 97% for 3Years)	Call Connection Time (Threshold: ≤ 6.5 Sec)	Call Completion Ratio (Threshold: > 98%)	End to End Speech Quality (Threshold: MOS > 3)	Inter System Handover of CS Voice (Threshold: ≥ 94% for 3 Year)	Success Rate (Threshold: > 99%)	End to End Delivery Time (Threshold: ≤ 12 Sec)
Mobilink	0.23%	0.77%	99.34%	5.04 Sec	98.95%	3.51	95.63%	100%	9.25 Sec
Ufone	0.87%	1.06%	97.96%	6.16 Sec	98.77%	3.62	100%	100%	5.48 Sec
Telenor	0.45%	0.55%	99.56%	5.24 Sec	98.95%	3.78	87.50%	100%	5 Sec
Warid	0.53%	1.06%	98.72%	6.58 Sec	99.54%	3.61	100%	100%	3.1 Sec
ZonG	0.26%	0.84%	99.28%	5.81 Sec	99.33%	3.50	66.67%	100%	4.28 Sec

<sup>13</sup> [https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2016/Mar-ITU-TRAI/S5\\_PTA\\_annex.pdf](https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2016/Mar-ITU-TRAI/S5_PTA_annex.pdf)

<sup>14</sup> [http://www.pta.gov.pk/index.php?option=com\\_content&task=view&id=2209&catid=93&Itemid=745](http://www.pta.gov.pk/index.php?option=com_content&task=view&id=2209&catid=93&Itemid=745)

37. It can be observed that all operators remained well within the defined thresholds for 2G services, excepting a few cases. For 2G services, the overall performance by all CMO's remained above the minimum required standard. Generally almost all operators performed fairly similar for 2G KPI's. Mobilink ranked the best for network uptime as it had the minimum amount 0.23% of "Downtime" experienced on its network. Telenor ranked the highest for "Grade of Service" with 0.55%. Considering "Service Accessibility", Telenor again scored the highest and remained most accessible network by achieving 99.56% accessibility.
38. Furthermore, best score for "Call Connection Time" was achieved by Mobilink with 5.04 seconds. Whereas, Warid had the highest "Call Completion Ratio" with 99.54%. The best "End to End Call" quality was provided by Telenor with 3.78 MOS, where, Mean Opinion Score (MOS) is a matrix which is used to measure call quality. MOS scoring is done via a range from 1 to 5 representing worst quality and excellent quality of call respectively. Both Ufone and Warid scored 100% for "Inter System Handover of CS" voice and hence were ranked the best for this KPI. For SMS service quality, all CMO's achieved 100% success rate and for "End to End SMS Delivery Time", Warid ranked the highest with 3.1 seconds.
39. Hence, considering the 2G services, Warid and Telenor earn the rank of being the best service providers as per above KPIs and hence, there is a tie between the two networks.
40. Below are the survey results for 3G services provided by all CMO's:

b. 3G KPIs

City	User Data Throughput (Threshold: 3G > 256 kbps)		Signal Strength Received Signal Code Power - 3G (Threshold: Minimum -100dBm)
	Data Throughput -HTTP Download (Threshold: 3G > 256 kbps)	Data Throughput -FTP Download (Threshold: 3G > 256 kbps)	
Mobilink	4044.57 kbps	3174.15 kbps	-72.89 dBm
Ufone	1271.33 kbps	1052.35 kbps	-72.81 dBm
Telenor	2226.53 kbps	1000.90 kbps	-74.41 dBm
ZonG	3664.5 kbps	2932.25 kbps	-77.32 dBm

According to the survey results with average download speeds of 4.04Mbps and average upload speeds of 3.17Mbps on its network, Mobilink was able to attain the highest position for its 3G services. Zong attained the second position. Telenor and Ufone while crossing minimum thresholds, remain overall at the bottom for their 3G services. For "Signal Strength Received Signal Code", Ufone performed the best with -72.81 dBm.

41. Below are the survey results for 4G services provided by all CMO's:

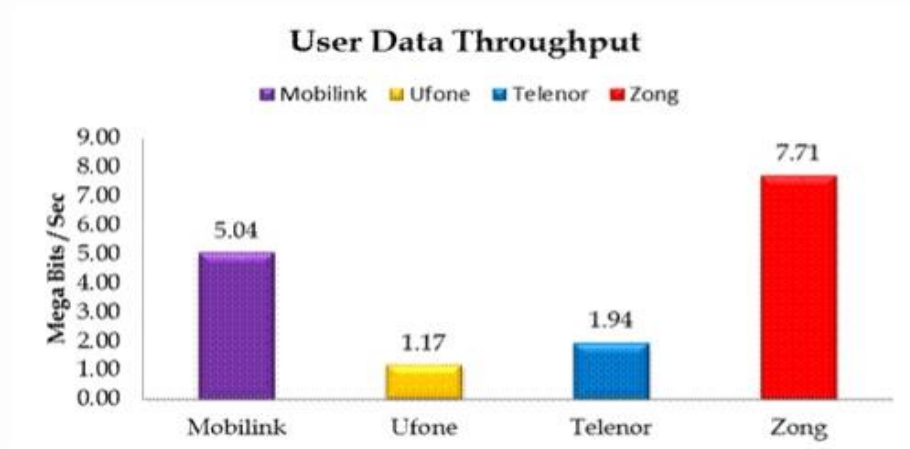
CMO's (2G/3G/4G)QoS SURVEY RESULTS - 2015			
City	User Data Throughput (Threshold: 4G > 2Mbps)		Signal Strength Received Signal Receive Power - 4G (Threshold: Minimum-100dBm)
	Data Throughput -HTTP Download	Data Throughput -FTP Download	
Warid	5.95 Mbps	2.9 Mbps	-80.35 dBm
ZonG	9.4 Mbps	6.1 Mbps	-85.69 dBm

The results demonstrate that only Warid and Zong are providing 4G services where Zong is providing better 4G services as compared to Warid.

42. Considering the above three services, it can be determined that Telenor and Warid, both have attained the best ranking pertinent to 2G KPIs with best performance in three KPI's each and hence, are in a tie. Whereas Mobilink has attained best performance in two of the 2G KPI's. In 3G KPIs's, Mobilink performed the best whereas in 4G KPI's, there were only two contenders with Zong performing better than Warid. Overall, keeping all 2G, 3G, and 4G services and their KPIs into consideration following observations have been made;
- i. Mobilink has performed the best in 4 KPIs, i.e. two of the 2G voice services and two 3G KPIs.
  - ii. Warid has performed the best in a total of three KPIs, each denoting 2G services.
  - iii. Telenor also attained best performance in three 2G KPIs.

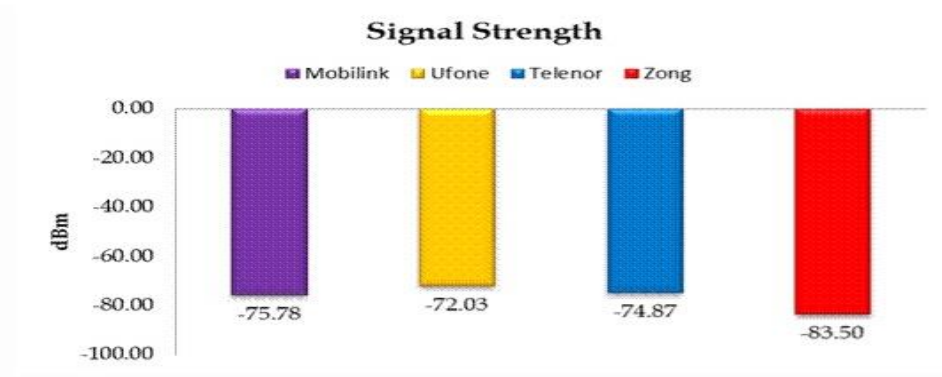
Since Warid is providing only 4G services and Telenor only 3G services, considering that 4G is more advanced technology compared to 3G and Telenor has poor performance pertinent to 3G services , it can be concluded that Warid provides better internet services and hence, Warid performs better than Telenor. As per this discussion, Telenor is not the best telecom network of Pakistan.

43. Before making any conclusions, it is also necessary to examine the Respondent's submissions. The Respondent presented "Mobile Data Speeds in Pakistan by PTA", issued in April 2016, which are discussed in detail below. The first section deliberates on Next Generation Mobile Services (NGMS).



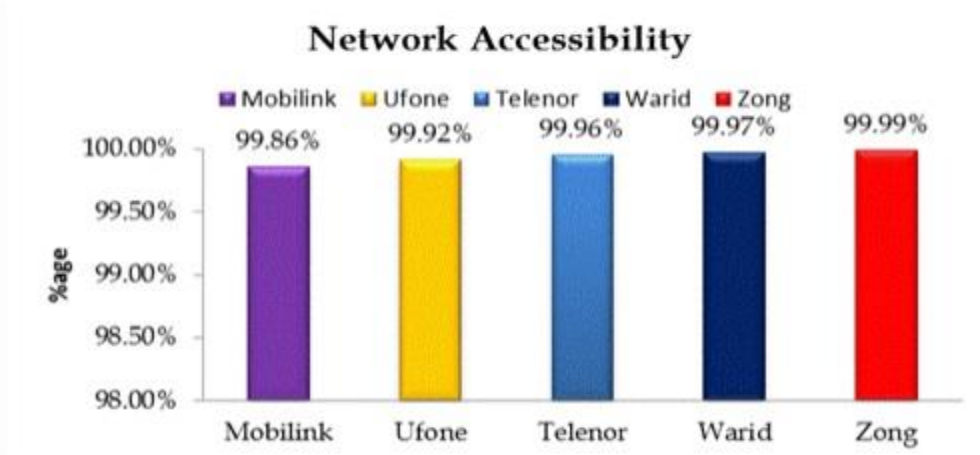
44. User data “throughput” is the first KPI that will be examined. This KPI defines “*user data rate (Internet speed) to be provided by NGMS operators to mobile users across the coverage areas.*” This KPI of all NGMS operators is higher than the set benchmark in their respective licenses. Performance wise, data throughput of Zong is the highest followed by Mobilink, whereas data throughput of Ufone is the lowest among all NGMS operators.

45. The second KPI is Signal Strength, which defines minimum outdoor signal strength. “*The higher the signal strength, the better data and voice services available to the mobile users would be.*”



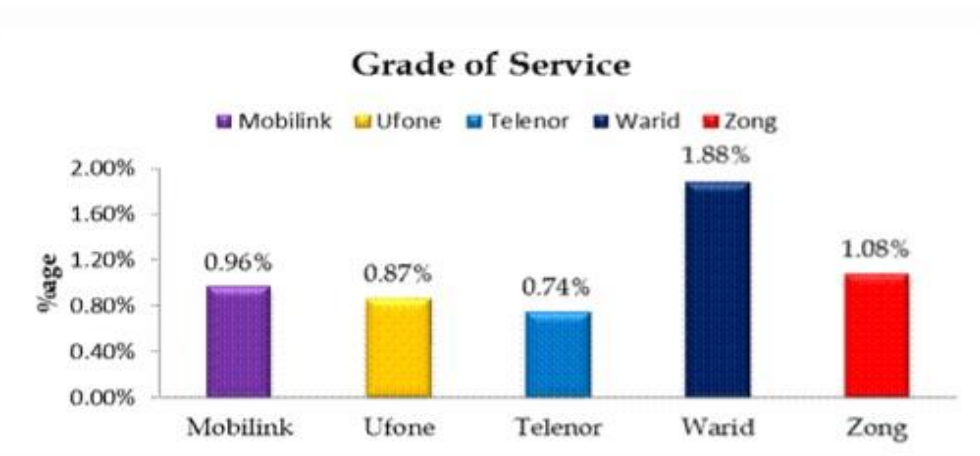
Signal strength of all the NGMS operators are above the benchmark revealing good coverage in majority of the covered areas. The lower the value of signal strength on negative axis, the higher is the signal strength. The report stated that “*While examining the above two parameters, it reveals that though the overall signal strength of Ufone and Telenor networks is comparatively better than those of Zong and Mobilink but because of more frequency spectrum used by Zong and Mobilink for NGMS, their quality is superior.*” Therefore, according to PTA, Zong and Mobilink have better service quality as compared to the rest of the CMOs.

46. The following section elucidates on the Cellular Mobile Services performance by the CMO. The results of the survey are displayed below. Sub-section (a) reveals performance of Voice indicators, starting with Network Accessibility.



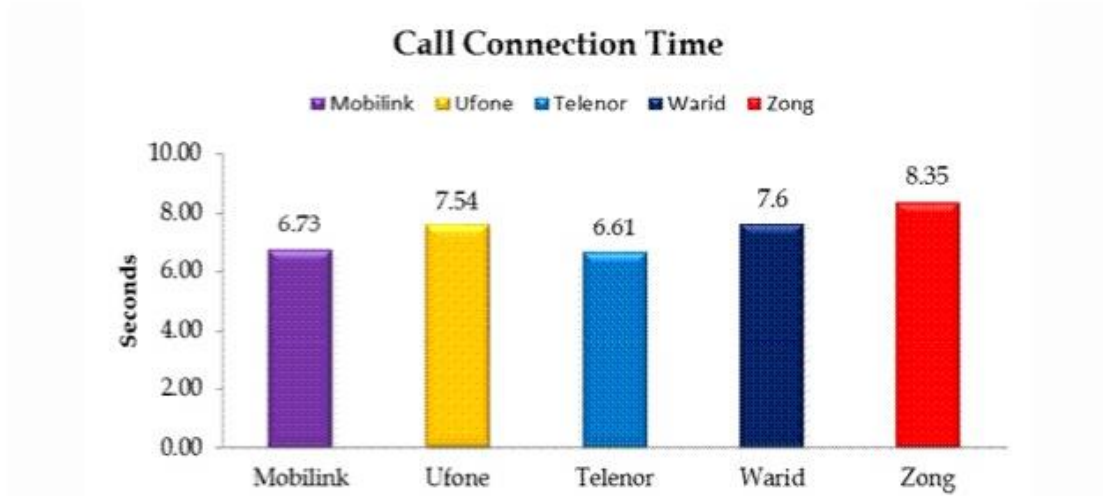
*“Network Accessibility is the probability that mobile services are available to an end customer by display of network indicator on the mobile phone throughout the entire duration of usage.”* This KPI, according to the survey, demonstrates satisfactory performance by all operators. However, Zong has attained the highest ranking in this regard.

47. Following Network Accessibility, Grade of Service (GoS) is determined for all operators. *“Grade of Service is probability that the end customer cannot access the mobile services when requested if it is offered by display of the network indicator on the mobile phone. In simple words, Grade of Service is Network Blocking”.*



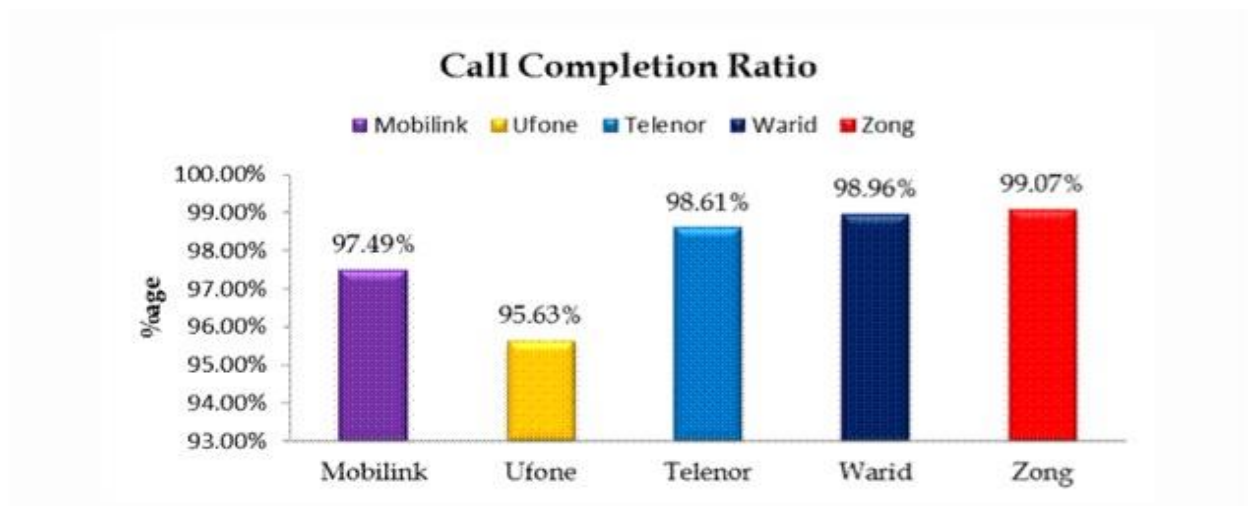
As per the survey, all CMOs are meeting the requirements with Warid displaying the best performance and Telenor displaying the worst performance.

48. Call Connection Time is the next discussed KPI. “*Call Connection Time is the time between sending of complete call initiation information by the caller and in return receipt of call setup notification. In simple words, it is time between dialing a number and hearing ring-back tone*”.



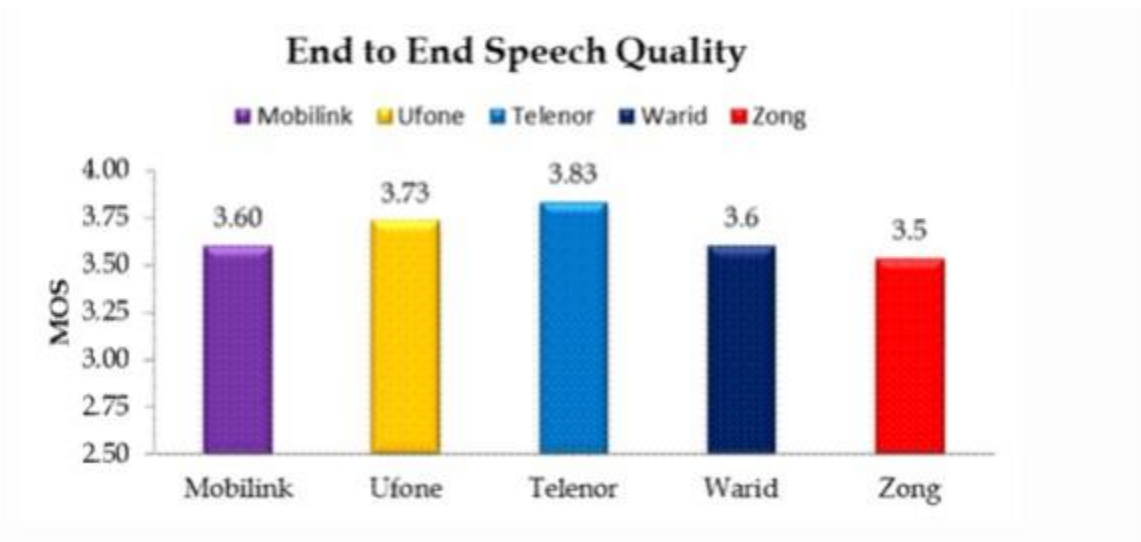
According to the survey, none of the operators are displaying satisfactory results. However, Telenor is performing better than the rest.

49. Call Completion Ratio is the next KPI, which is “*the probability that a service, once obtained, will continue to be provided under given conditions for a given time duration or until deliberately terminated by either caller (A-party) or receiver (B-party). In simple words, this KPI provides information about Call Drops*”.



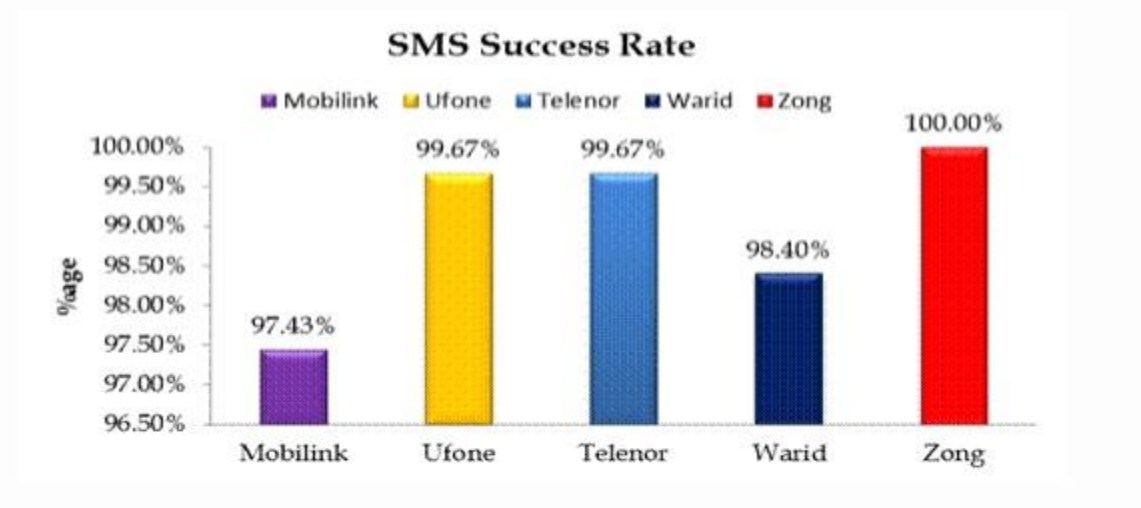
For this particular indicator, only three mobile operators are meeting the required standard, i.e., Telenor, Warid and Zong. Whereas, Mobilink and Ufone are below the required standard. Overall, Zong has the best performance in this indicator.

50. The next KPI is End-to-End Speech Quality which “is the degree of speech quality that a listener perceives at the terminal/mobile with a talker at the other end. In simple words, it provides information about clarity of voice.”



All the mobile operators are performing above the required minimum standard with Telenor being at the top.

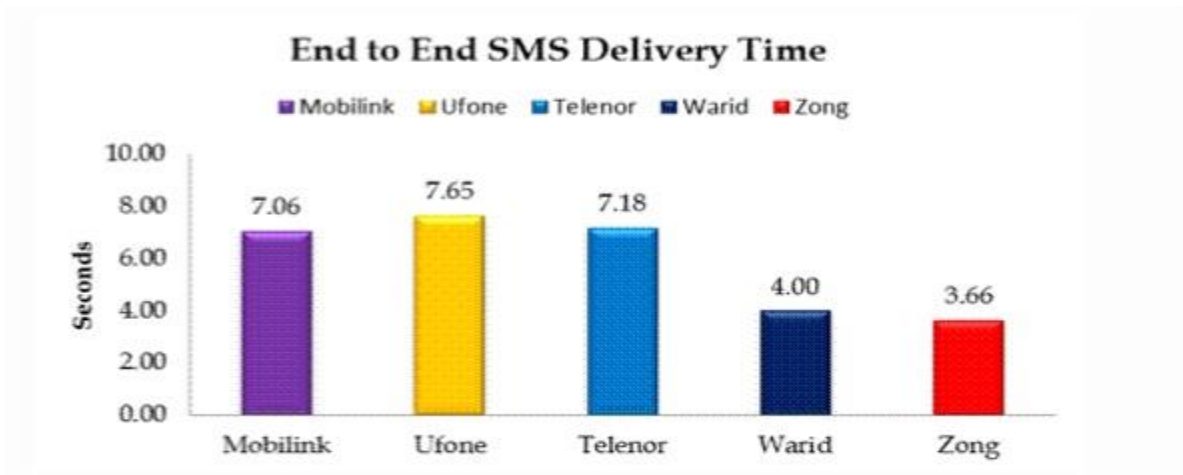
51. The next section covers the SMS KPIs that are discussed below. The first KPI measuring SMS service performance is SMS Success Rate. This “is the probability that the short message is delivered successfully, end-to-end when requested and display of the relevant information on the mobile phone. It provides information about successful delivery of SMS.”



As for this KPI, Zong has the best performance. SMS success rate for two of the mobile operators, i.e., Mobilink and Warid Telecom, are below the standard. The rest of the CMOs are meeting the standard.



52. The final KPI discussed in this report is also for SMS services which is End-to-End SMS Delivery Time. This *“is the time between sending a short message to a short message center and receiving the very same short message at intended mobile phone (receiver). It provides average time taken for delivery of short message from sender to recipient.”* For End-to-End SMS Delivery Time, all the CMOs are meeting the required standard but Zong has the Best performance. The graph is displayed below:



53. Summing it all up, as per this report, Zong has the best performance in six out of nine KPIs. Telenor has the best performance in two out of nine with Warid having the best performance in only one of them. Therefore, according to this report, which has been submitted by the Respondent itself, Zong is the best performing CMO in Pakistan and not Telenor. It should be noted that the difference in results of the two submitted reports is due to the fact that the CMO (2G/3G/4G) QOS Survey Results submitted by the Complainant is for the year 2015, whereas, the Respondent presented Mobile Data Speeds in Pakistan was issued by PTA in April 2016.

54. However, overall, in neither of the reports, the Respondent was able to attain the highest position and hence, its claim of being “Pakistan’s best network” lacks a reasonable basis and amounts to dissemination of false information pertinent to the quality of its services, which is capable of causing consumer injury as well as harming business interest of other competing undertakings.

55. Furthermore, the Commission in the past has also accepted an undertaking’s claim of being “No.1”, “best” in this case, via evaluating its market share. As mentioned earlier, in Pakistan, Mobilink, Ufone, Telenor, Warid, and Zong have the market shares 29.21%, 15.23%, 28.40%, 8.32%, and 18.83% respectively. Even by this measure, the Respondent cannot claim to be the best network as it does not have the highest market share either.

56. Telecom industry is one of the most competitive industry in Pakistan which has seen immense growth and innovation during the last decade. All the undertakings in this market have been observed to be incessantly involved revolutionizing this industry via their services in form of bundled packages, competitive pricing, innovative services such as mobile banking, tapping new technologies such as 3G and now 4G services, etc.
57. Furthermore, all these CMOs are also involved in heavy competition which is evident through their respective rampant advertising campaigns. In such an environment, it is extremely necessary to ensure that all the undertakings are involved in fair competition, especially because this industry is based on huge investments owing to its requirement of extensive infrastructure and intricate technological requirements.
58. In this reference, the New Zealand Commerce Commission also issued an order, *“The Queen vs Vodafone New Zealand Limited, 2012”*<sup>15</sup>, in the matter of deceptive marketing practices wherein, the Defendant, Vodafone New Zealand Limited had made the claim of having *“Largest 3G Network”*. In this case, it was held that:
- “While searching for a reasonable basis, the Commission was evaluating whether the Defendant’s network has the largest geographical spread or not. Whereas, the Defendant submitted that this claim was based on the fact that it had the largest consumer base.”*
59. The order was passed keeping in view these considerations. It can be observed from this that terms such as “largest” or “best” cannot always be taken as general terms or statements with no absolute meaning as they also have certain inferences in the minds of the consumers. What really matters is what kind of a product or service is under consideration and what is the overall net impression of the statement under scrutiny. In case of cellular mobile network services, it has been thoroughly discussed in this report and has been highlighted in the aforementioned case, that measurable indicators are present which transform otherwise general statements such as “largest”, “best”, etc., into absolute claims that have to be substantiated by a reasonable basis.
60. Therefore, in this case as well, although the Respondent has used the term “best”, which in some cases may be taken as a generalized term or an exaggerated, puffery statement, due to the nature of the service and the claim itself, *“Pakistan ka sab se behtareen network-Telenor”* which can be translated as, “Pakistan’s best network-Telenor”, is not a general or puffery statement. Due to mentioning of Pakistan, the market has been specified as that of Pakistan, and within Pakistan, since there are only five major mobile network operators, the comparison becomes all the more defined and limited. Furthermore, these services have

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<sup>15</sup> <http://www.comcom.govt.nz/business-competition/enforcement-response-register-commerce/detail/775>

distinct KPIs through which the quality of the service can be measured and hence determined.

61. A thorough examination of all the factors that add up to determination of level of quality of these services, the Respondent has failed to attain the best position, which renders their claim to be a false statement and hence, it can be concluded, that their actions are deceptive and are in violation of Section 10 of the Act in terms of Section 10 2 (b) by making an absolute claim of, “*Pakistan ka sab se behtareen network-Telenor*” translated as, “Pakistan’s best network-Telenor”, without a reasonable basis, related to the quality of its services.
62. These actions further amount to violation of Section 10 2 (a) of the Act whereby the dissemination of false and misleading information to consumers may result in consumer injury and distorted decision making unjustly in favor of the Respondent which is capable of harming business interests of other competing undertakings.
63. In addition to above, a case was discussed by Australian Competition and Consumer Commission and Australian Securities and Investments Commission wherein a similar misleading claim was also made by an undertaking, GE Money, as having “*one of the best rates in the market.*”<sup>16</sup> In this matter it was stated that<sup>17</sup>,

***GE Money has changed its promotion of its personal and debt consolidation loans after concerns raised by ASIC. It had been promoting the loans as available at “one of the best rates in the market, from 12.99%” when in fact they were subject to risk based pricing and consumers could be charged an interest rate of up to 34.95%. ASIC’s view was that this was misleading as it suggested that all customers would receive an interest rate that was “one of the best rates in the market”, when this was not correct.***

64. Therefore, it is further reiterated, that merely the use of term “best” will not withdraw the Respondent from actually making an absolute claim pertinent to its services. Furthermore, just as in the case of GE Money, this market (cellular network industry) also has quantifiable measures that can distinctly determine whether a cellular network is actually the best in the market or not. Consequently, the Respondent’s submission pertinent to this statement being a generalized one which cannot be substantiated, is not acceptable. Subsequently, it is concluded that the Respondent’s involvement in false and misleading

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<sup>16</sup> <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-325mr-ge-money-changes-advertising-following-asic-concerns/>

<sup>17</sup> <https://www.chapmantripp.com/publications/Documents/2015%20PUB%20Going%20to%20Market%20-%20Consumer%20Law%20Update%20Newsletter%20-%20December.pdf>

comparison of services in the process of advertising by terming itself to be the best compared to other competing undertakings also amounts to violation of Section 10 2 (c) of the Act.

## **E. CONCLUSION AND RECOMMENDATION**

65. In light of the discussion made in the preceding paras, the enquiry committee is of the considered view that Respondent's claim "*Pakistan ka sab se behtareen network-Telenor*", without any reasonable basis is in violation of Section 10(1) of the Act, within the meaning and scope of Section 10 (2) (a), 10 (2) (b), and 10 (2) (c) of the Act.
66. In order to protect consumers and ensure that they are not deceived while taking decision on the basis of misleading information, the interest of general public demands that deceptive marketing practices must be discouraged at all levels and a fair competition in the market is guaranteed.
67. The Enquiry Committee, therefore, recommends that Respondent by being involved in violation of the provisions of Section 10 of the Act, the Commission may initiate necessary proceedings against it under Section 30 of the Act.

Faiz ur Rehman  
Assistant Director  
(Enquiry Officer)

Fatima Shah  
Management Executive  
(Enquiry Officer)