

# 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 PAKISTAN STATE OIL FOR DECEPTIVE MARKETING PRACTICES

*BY*

*Noman laiq & Resham Ibrahim Khan*

**Dated: September 9<sup>th</sup>, 2014**

## A. BACKGROUND

1. A citizen of Pakistan (hereinafter the ‘**Complainant**’) filed a complaint with the Competition Commission of Pakistan (hereinafter the ‘**Commission**’), against Pakistan State Oil (hereinafter the ‘**Respondent**’) for alleged violation of Section 10 of the Competition Act, 2010 (hereinafter the ‘**Act**’) i.e. deceptive marketing practices.
2. The Complainant alleged that the Respondent in order to promote and market its products started marketing its new brand with the name “Premier XL Gasoline” and “Green XL Plus Diesel” and claimed that its use both in new vehicle and old vehicle will result in more mileage and improved performance due to use of various additives in it.
3. The Complainant alleged that in 2012, the Respondent discontinued the use of the additives while the name used for the products remained the same i.e. “Premier XL Gasoline” and “Green XL Plus Diesel”.
4. Thus Respondent is, distributing false and misleading information to consumers, and distribution of such information is also capable of harming the business interest of the other undertakings. It has been alleged that such conduct amounts to deceptive marketing practices in violation of Section 10 of the Act.
5. Keeping in view the foregoing, the Competent Authority initiated an Enquiry in accordance with sub-section (2) of Section 37 of the Act by constituting an 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**

6. The Complainant is a citizen of Pakistan and a regular consumer of the gasoline products marketed by the Respondent. The Respondent, (PSO) is Pakistan's largest energy company and is currently engaged in marketing and distribution of various products including motor gasoline (mogas), high speed diesel (HSD), furnace oil (FO), jet fuel (JP-1), kerosene, CNG, LPG, petrochemicals and lubricants.
7. The Complainant submitted that the Respondent is involved in unfair and deceptive acts in attempting to manipulate the commodities markets for gasoline and diesel since 2012 until present which has resulted in misleading consumers.
8. It has been stated in the Compliant that gasoline is petroleum derived liquid mixture consisting primarily of hydrocarbons and enhanced with benzenes to increase octane ratings. It is produced from crude oil and other materials in oil refineries and is used as fuel in internal combustion engines. The primary use of gasoline is for automobiles and trucks.
9. It has been further submitted that Pakistan is one of the few countries in the world that still uses the lowest grade of gasoline and diesel fuel which has a harmful impact on both the engine performance and the environment. That to improve performances of engines and reduce the adverse affect on the environment, chemical detergents are used as additives with gasoline and diesel to keep the injectors clean. The Respondent began the use of such additives with its products in order to enhance the performance of its oil as well as causing less harm to the environment. The use of these additives began in 2003-2004.
10. The Complainant has further submitted in order to promote its enhanced products; the Respondent started marketing the same with new brand names of "Premier XL Gasoline" and "Green XL Plus Diesel". The Respondent also claimed that the use of its products in both old and new vehicles would result in extra mileage, smooth running of the engine, protect the engine and substantially reduce the amount of

“black smoke” produced. The Complainant alleges that as a result of such marketing, the consumption of these brands increased.

11. The Complainant alleged that in 2012, the Respondent discontinued the use of the aforementioned additives while the name used for the products remained the same i.e. “Premier XL Gasoline” and “Green XL Plus Diesel”.
12. According to the Complainant, the continued use of these brand names is deceptive in nature and causes consumers to be misled. Consumers are under the impression that these products are sold with the additives and therefore will have the benefits that are advertised. Also, the Complainant has submitted that the discontinuance of the additives was concealed intentionally.
13. The complainant further alleged that the respondent that the respondent actively, intentionally and fraudulently concealed the existences of manipulations alleged herein by continuously advertising, marketing and using brand names “Premier XL Gasoline” and “Green XL Plus Diesel” even after it discontinued the use of additives which was the sole reason for the introduction and use of these brand names.
14. The reliefs claimed in the complaint are as follows:
  - (i). To take action under Section 10 of the Act.
  - (ii). Restrains the Respondent from using and marketing the brand names “Premier XL Gasoline” & “Green XL Plus Diesel”.
  - (iii). Order the Respondent to pay penalties as authorized by the Competition Act, 2010.
  - (iv). Any other relief deemed fit in the circumstances.

## **C. RESPONDENT’S REPLY:**

15. The complaint was forwarded to the Respondent for its comments. The Respondent submitted para wise comments to the complaint vide letter dated August 25, 2014.
16. It was submitted that the complaint is frivolous and vexatious and has been filed without lawful cause and is liable to be dismissed/rejected under Regulation 20 of the Competition Commission (General Enforcement) Regulations, 2007. The Respondent has further submitted that the complaint has failed to make any case against PSO on account of “deceptive marketing practices” under Section 10 of the Competition Act 2010, whether through distribution of false or misleading information to consumers or through information lacking a reasonable basis in relation to price, general character, production, general properties and suitability for use or quality of goods being sold by it resorting to deceptive marketing practices in any manner as alleged or at all.
17. The respondent clarified that fuel for internal combustion engines comprise of complex mixtures containing hundreds or thousands of chemical components, whose composition has evolved considerably during the past 100 years. The basic requirement relating to fuel for internal combustion of engines in volatility, which is vaporized/atomized into a stream of intake air, either in carburetor or by a fuel injection nozzle. The use of fuel additives are not a necessary part of improving vehicle’s performance. The fuel additives may not increase fuel mileage or performance, the car performance and mileage actually depends on fuel nomenclature that carries in fuel tank through refining.
18. The Respondent stated that they began the use of additives from November 2003 for diesel and from August 2004 for Gasoline. Since the induction of these additives until discontinuation in May 2012, no significant performance was observed. Furthermore, none of the motorists have raised any complaint with respect to fuel performance and quality after discontinuation of the additive since May 2012.
19. The Respondent has also stated that the supplier of the additives subsequently filed Suit No. 1570/2012 in the High Court of Sindh at Karachi and obtained an interim

injunction where by the effect of the termination notice was suspended (although PSO claims they are not obliged to purchase further additives from them) and fuel sold by PSO does not currently contain any additives. The matter is now sub-judice before the High Court of Sindh at Karachi.

20. Lastly, the Respondent asserts that they purchase Gasoline and HSD through import and from local refineries which fully comply with the specifications issued by GOP/Ministry of Petroleum and Natural Resources (MPNR). It has been submitted that PSO is a marketing company which meets all standards and industry norms and operates in line with regulatory requirements.

#### **D. DECEPTIVE MARKETING PRACTICES**

21. The Respondent by engaging itself in the distributing false and misleading information to consumers, and which is also capable of harming the business interest of the other undertakings, Prima Facie violates Section 10 of the Act i.e. Deceptive Marketing practices. For ease of reference Section 10 has been reproduced below:

*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.*

## **E. ANALYSIS & FINDINGS:**

### **Premier XL**

22. Premier XL contains a proprietary multifunction detergent additive package, which cleanup deposits from fuel injectors, carburetors and intake valves. This result in improved fuel flow into the engine, which in turn boost combustion energy.
23. PSO Premier XL gives improved performance in both new and old vehicles. It protects engine components by keeping them operating at designed conditions and continues to give improved combustion. Premier XL is suitable for use in all 2 stroke and 4 stroke engines.
24. Additive package used in Premier XL is EPA and CARB Certified. Fuel economy of the vehicles with the continuous use of premier XL, due to special Gasoline detergent additive present in it which keeps engine clean, resulting in quieter and improved performance.
25. Premier XL contains a corrosion inhibitor that will protect the tank and other engine parts from internal corrosion. Premier XL keeps the environment clean by reducing harmful emissions such as carbon dioxides carbon monoxide and hydrocarbon.
26. Typical key properties of Premier XL is given in the table given below:

Premier XL	Values
Color	Pinkish
Specific Gravity at 15.6/15.6 ° C, ASTM D-1298	Report
Octane Number Research, min ASTM D-2699	90
Lead Contents	Unleaded
Distillation 10% Vol. Rec. at Deg C, max ASTM D-86	80
Distillation 50% Vol. Rec. at Deg C, max ASTM D-86	125
Distillation 90% Vol. Rec. at Deg C, max ASTM D-86	180
End Point at Deg C max ASTM D-86	205
Residue % vol, max ASTM D-86	2
Reid Vapor Pressure @ 37.8°C, kPa (PSI), max ASTM D-323	62(9)summer 69(10)Winter
Sulphur, % wt, max ASTM D-1266	0.1
Copper Strip Corrosion, 50°C, max ASTM D-130	No. 1
Existent Gum, mg/100 ml, max ASTM D-381	4.0

27. Images of the Premier XL advertisement:

**POWERING Performance!**

**PREMIER XL**  
The Drive Clean Gasoline

*For those who dare to go...*

*...beyond just fuel!*

**PSO PREMIER XL:**

- CLEANS your vehicle's fuel injectors
- Removes combustion chamber deposits
- Provides corrosion control, resulting in... **POWERING PERFORMANCE**

**PSO Premier XL - POWERING Performance, drive after drive!**

**PSO**  
Pakistan State Oil

Toll Free 0800-03000      www.psopk.com      UAN 111-111-PSO (776)

## Green Plus XL



28. Green Plus XL the first choice diesel with its unique formula in Pakistan first pre-additive diesel, which provide more mileage, smooth running and less black smoke at the extra cost.
29. The product was launched in February 2004. Brand name for the product was conceived in such a way so that product attributes were instantly linked with the name. The word green establishes environment friendliness and the word XL and Plus means greater performance.
30. Green XL Plus Diesel is an advance performance fuel with it special additive combustion improved technology which helps in keeping the engine clean and the environment green.
31. It is designed to give engine more power notable reducing black smoke emission thus improving engine efficiency. The result is less maintenance cost for your vehicle and longer engine life.



**I. WHETHER THE ALLEGATIONS LEVELED AGAINST THE RESPONDENT UNDER THE COMPLAINT CONSTITUTES A *PRIMA FACIE* VIOLATION OF SECTION 10 OF THE ACT?**

32. The Complainant in the instant matter has primarily alleged, the continued use of the brand names i.e. Premier XL and Green Plus XL, is deceptive in nature and

causes consumers to be misled. Consumers are under the impression that these products are sold with the additives and therefore will have the benefits that are advertised. Also, the Complainant has submitted that the discontinuance of the additives was concealed and intentional.

33. It has also been alleged that the respondent unfair and deceptive acts in attempting to manipulate and in manipulating the commodities markets for gasoline and diesel since 2012 until present, with the effect of deceiving the consumer of gasoline and Diesel in Pakistan.
34. It is pertinent to mention here that provisions of clause (b) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act inter alia prohibits the undertaking(s) from dissemination of information which lacks reasonable basis regarding the price, character, method or place of production, properties, suitability for use, or quality of good. For convenience and brevity the relevant provisions are reproduced herein below:

*Section 10 (2)(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;*

35. In this regard the Complainant alleged that in order to promote its enhanced products, the Respondent started marketing the same with new brand names of “Premier XL Gasoline” and “Green XL Plus Diesel”. The Complainant alleges that as a result of such marketing, the consumption of these brands increased.
36. In response to the aforesaid allegations, the Respondent denied the allegations made in the complaint. It was submitted by the Respondent the complaint has failed to make any case against PSO on account of “deceptive marketing practices” under Section 10 of the Competition Act 2010, whether through distribution of false or misleading information to consumers or through information lacking a reasonable basis in relation to price, general character, production, general properties and

suitability for use or quality of goods being sold by it resorting to deceptive marketing practices in any manner as alleged or at all.

37. The Respondent stated that they began the use of additives from November 2003 for diesel and from August 2004 for Gasoline. Since the introduction of these additives until discontinuation in May 2012, no significant performance was observed. Furthermore, none of the motorists have raised any complaint with respect to fuel performance and quality after discontinuation of the additive since May 2012.
38. The respondent further stated that PSO purchase Gasoline and HSD through import and from local refineries which fully comply with the specification issued by the GOP/ Ministry of Petroleum and Natural Resources (MPNR). PSO is a marketing company which meets all standards and industry norms and operates in line with regulatory requirements.
39. The respondent further submitted that the oil and gas industry is heavily regulated and the quality and price of fuel being sold to the consumer is prescribed by the Federal Government through the MPNR and through the Oil and Gas Regulatory Authority.
40. The respondent denied the impression that the new brand names i.e. Premier XL Gasoline and Green XL Plus Diesel were adapted to indicate any improved performance. Instead these brand names were adapted pursuant to a marketing campaign launched in 2003-04 and the trade mark registered for this purpose have no connection whatsoever with the detailed product composition but is a brand initiative launched by PSO in line with the marketing strategy and consistent with PSO's brand identity green colored logo.
41. ***Although the respondent in its reply dated August 25, 2014 stated that the fuel now used in Pakistan is of improved quality. Therefore the use of additives has no additional benefit. But contrary to that in a letter by the PSO to MPNR they stated that they discontinue the use of additive due to the low quality of fuel in***

***Pakistan. Details regarding the letter and report supporting that letter are explained below.***

42. The Chief executive and Managing Director of Pakistan State Oil in his letter <ANNEX -A> to Minister for Petroleum and Natural Resource and to Secretary for Petroleum and Natural Resource dated May 17, 2012 titled “Dis-continuation of Afton Chemical Addition in Gasoline and Diesel” admitted that PSO is no more using additives both in gasoline and diesel. Relevant extracts of the letter is reproduced below:

*“Please note that presently we are adding Afton Chemical Additives both in Gasoline and Diesel as detergents which claim to clean the injection nozzles. These chemicals have no economic or technical benefit as both our Fuels (Gasoline & Diesel) in which they are added are of low quality (Not even meeting Euro 2 Specifications) and majority of our vehicles ,on the roads are of old design and metallurgy .Thus any benefit is not realized even if it is assumed that they have potential to clean. Presently, there is no analytical way to prove that it improves or can clean our vehicle by addition of these additives. The present contract of 5 years can be terminated based on clause 2.b which allows us to give 6 months notice to the supplier for its termination.”*

*“In exercise of our rite to add or subtract, any chemical based on commercial and technical viability ,we proceeding to cancel this contract giving 6 months notice saving PSO USD:6400 Million or Rs.584,000 Million Annually.”*

43. The Pakistan state oil along with the aforesaid letter also submitted a report <Annex-B> titled “AFTON Chemicals” to the concerned authorities.
44. The report stated that Pakistan is one of few countries in the world who still use one of the lowest grades of both Gasoline and Diesel fuels. Comparing with just sulfur parameters as given below, which has both relationship with engine performance and environmental impact with Euro specification one can judge where we stand:

<b>Product</b>	<b>Key Parameters</b>	<b>Pakistan Limit</b>	<b>Euro 2</b>	<b>Euro 3</b>	<b>Euro 4</b>	<b>Euro 5</b>
Gasoline	Sulfur (mg/kg), max	1,000	500	150	50	10
Diesel	Sulfur (mg/kg), max	10,000	2,000	350	50	10

Based on above it is quite obvious that Pakistan Refineries / Standards have a long way to go produce environmental friendly fuel of Euro 5 quality .On the other end there are chemical additives available which are detergents which it is claimed can keep the injectors clean in an engine. However, in a scenario where the fuel is already of low quality and engine in transport fleet of old design such detergents don't work and additives are of no benefits.

45. The report further explained that it is essential that prior reaching to a stage of thinking to add any detergents, we need to improve our fuels to be of Euro 5 quality before testing or seeing the efficiency of such additives. Even in Europe where fuel is of Euro 5 quality normally such detergents are provided in bottles at the retail for consumer choice to add themselves rather than adding in the whole bulk fuel. Majority of Gasoline and Diesel is traded worldwide without the addition of detergents.
46. It was concluded in the report, the addition of Afton additives (HiTec 6470 for Gasoline and HiTec 4661 for Diesel) is not adding any technical value on our present fuels nor commercially justified as we can always advertise that we sell pure Gasoline and Diesel.
47. ***As explained in Para 40, where respondent denied the impression that the new brand names were adapted to indicate any improved performance. Instead these brand names were adapted pursuant to a marketing campaign launched in 2003-04. Whereas when these brands were launched on September 2004, PSO in its press release stated that:***

*Tariq Kirmani, managing director Pakistan State Oil (PSO), and Mike Lewis, managing director Afton Chemical Limited, signed an*

*agreement on Tuesday for the long term supply of pre-additised advanced gasoline. According to a PSO statement, the new product is named 'Premier XL' will be available at all PSO outlets throughout the country. The new product Premium XL enhances fuel economy, which leads to better engine clean-up and corrosion control of fuel tanks and piping and reduces exhaust emissions, the release added. Staff report.*

48. It can be observed that the information provided in the article above clearly states the fact that the new product is meant to “enhance fuel economy”, leading to “better engine clean up and corrosion control of fuel tanks and piping, and reduces exhaust emissions.”
49. The respondent denied that the use additives may improve the performance and reduce the harmful effects to the environment. The respondent claimed that this is only meaningful where there is lower grade gasoline or diesel used. There is a no ascertainable economic or technical from the use of improved quality of fuel now used. Images of respondent advertisement indicating the use of additives is given below.



50. It can be observed that the information stated in the advertisement of PSO, that they have added multifunction additives in their brand “Premier XL”.
51. The enquiry committee analyzed the product name used by other market players of same industry. It has been observed that other market players are not claiming of using any additive in their product, therefore they are not marketing their product

as having any additional benefit. Name used by other market companies for similar products are stated below:

UNDERTAKING	PRODUCT	
	PETROL	DIESEL
PSO	Premier XL	Green XL Plus
CALTEX	Supreme	Diesel
SHELL	Super	Diesel

52. It was held in the Commission’s ZONG Order dated September 29, 2009 *“the approach of the Commission is to evaluate complete advertisements and an opinion regarding deception is to be formulated on the basis of the net general impression conveyed by them and not on isolated excerpts.”*

53. It was held in the Commission’s M/S. Al-Hilal Industries (Pvt.) Limited Order dated June 20, 2012:

*“Keeping in view all the facts and circumstances of the matter at hand, the Commission is of the view that consumers are entitled to expect that actual contents of packaged juice match the overall impression created by the packaging and the marketing of the product. The undertakings must say what they mean and show what they sell to prevent deceptive marketing. The labeling on packaged juice can have a significant impact on not only the consumer’s purchasing decision but also the maintenance of fair competition in the market. In our considered view, there is no doubt that the undertaking’s marketing in relation to its product, Fresher Juice, is deceptive and found to be lacking a reasonable basis, in terms of Section 10 (1) read with Section 10 (2) (b) of the Act”*

54. It was held in the Commission’s Paint Manufacturers Orders January 13, 2012 dated:

*“In sum, it has been established in the preceding paragraphs that the non disclosure of tokens in paint packs, is deceptive in that it creates ambiguity and is found lacking in having a reasonable basis as to the price borne by the consumer. Consumers are not informed about the presence of token and its value, and it is placed right at the bottom of the paint pack making access to such information further difficult. The onus is on the undertakings to ensure that no deception results through their marketing practices. This could also have the adverse*

*effect of giving an unfair competitive edge to paint companies offering higher token values without disclosures to the consumer who bears the price, as the painter would naturally have an incentive to purchase paint containing higher token values, and other factors such as quality, durability may pale in comparison to this consideration. The practice of omission of material information with respect to the tokens in paint packs amounts to misleading consumers, hence, is deceptive and in violation of section 10 of the Act. However, while the Commission is empowered to prohibit deceptive marketing practices, it is not our mandate to require abandoning of any particular practice if due disclosures are in place. We consider it the Undertakings' prerogative to adopt or not to adopt any marketing practices; the Commission has to only ensure that such practices are compliant with Section 10 of the Act."*

55. Based on the facts available with us, it can be concluded that Respondent concealed its discontinuance in such that an ordinary consumer through ordinary and reasonable diligence could not have discovered the wrongdoing.
56. Further the respondent manipulated the Gasoline and Diesel market in clandestine fashion with the intent to mask its actions and deceive the consumers of Gasoline and Diesel.
57. The respondent informed the Ministry of Petroleum and Natural Resources regarding the discontinuation of the use of additives but the respondent never brought this fact to the knowledge of the consumer of the "Premier XL Gasoline" and "Green XL Plus Diesel".
58. In view of the above, we are of the view that the allegations leveled against the Respondent under the complaint constitute a prima facie violation of Section 10 of the Act i.e. the deceptive marketing practices.

## **F. RECOMMENDATIONS:**

59. The deceptive marketing practices discussed in this enquiry report have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their products/services in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information. Prima



facie violations under the Act in terms of the findings of this enquiry report warrant initiation of proceedings against Pakistan State Oil, under Section 30 of the Act in accordance with law.

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