

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED BY M/S. PANTHER  
TYRES LIMITED AGAINST M/S SERVICE INDUSTRIES  
LIMITED**

BY

   
Riaz Hussain & Amin Akbar

October 04, 2023

## 1. BACKGROUND

1.1 M/s Panthers Tyres Limited (the '**Complainant**'), filed a complaint dated January 13, 2023, against M/s. Service Industries Limited (the '**Respondent**') with the Competition Commission of Pakistan (the '**Commission**') for alleged violation of Section 10 of the Competition Act 2010 (the '**Act**'), pertaining to Deceptive Marketing Practices.

1.2 It was alleged in the complaint that the Respondent is involved in dissemination of false and misleading information to the consumers through the adoption of various marketing strategies that revolve around absolute and exaggerated claims regarding their product's quality, suitability, characteristics and properties. Furthermore, the advertisements, which provide an impression regarding the strength and longevity of the tyres manufactured by the Respondent, are being created in an attempt to convince the general public that the Service Tyre (the "**Product**"):

- i. 40% *tak ziada chaley*;
- ii. 40% *tak ziada durable*;
- iii. Safe and reliable;
- iv. *Kam ghissayand*;
- v. 40% *zaida chaley*; and
- vi. Grip service *jese tu fikar kесе*.

Also, all other marketing tactics pertaining to the durability of the Product, are therefore, distorting competition in the market. The Complainant believes that by doing so, the Respondent has the ability to affect the consumer buying decision, and has distorted healthy competition in the market.

1.3 Based on the preliminary fact finding, the competent authority initiated an enquiry dated February 01, 2023, in accordance with sub section (2) of Section 37 of the Act by appointing Mr. Riaz Hussain, Deputy Director (OFT) and Mr. Amin Akbar, Assistant Director (OFT) as enquiry officers (collectively the '**Enquiry Officers**'/ '**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 its findings and recommendations, *inter alia*, on the following:

- i. *Whether the conduct of the Respondent is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2(a)) of the Act?*
- ii. *Whether the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, place of production, properties, and quality of goods in, prima facie, violation of Section 10(1) in general and in particular, Section 10(2) (b) of the Act.*

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iii. *The Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (c) of the Act, which prohibits false and misleading comparison of goods in the process of advertisement; and/or*

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

## **2. THE COMPLAINT:**

2.1 The Complainant is a company limited by shares incorporated under the Companies Ordinance 1984. The Complainant was established to *inter alia* manufacture, import, export, buy, sell or otherwise deal in tyres and tubes for motorcycles, scooters, rickshaws, bicycle, aircrafts, cars, trucks, tracks, trolleys and other vehicles.

2.2 The Respondent is also a public limited company incorporated under the Companies Ordinance 1984. The Respondent is also involved, *inter alia*, in the manufacture of tyres and tubes for motorcycles, scooters, rickshaws, bicycle, and other vehicles. The Complainant and Respondent are, therefore, competitors in the relevant market.

2.3 The Complainant alleged that the Respondent is involved in the dissemination of false and misleading information to the consumers through the adoption of various marketing strategies that revolve around absolute and exaggerated claims regarding their product's quality, suitability, characteristics, and properties. Moreover, through advertisements, the Respondent has created an impression regarding the strength and longevity of the tyres manufactured by it is being created in an attempt to convince the general public that the product:

- i. 40% *tak ziada chaley* (work more up to 40%)
- ii. 40% *tak ziada durable* (up to 40% more durable)
- iii. Safe and reliable
- iv. *Kam ghissay*
- v. Grip service *jese tu fikar kесе*

The URL link of the misleading advertisement being disseminated by the Respondent is as follows: <https://www.youtube.com/watch?v=CMORUKgLJHY>.

2.4 The Complainant stated that in addition to the above, the Respondent has also created false impression to the extent of the technology that is being used by them for their tyres, i.e., "German Technology". However, no company in Pakistan possesses the infrastructure or expertise for the same and the Respondent is involved in grave fabrication only to the dupe the general public into purchasing their products that are in no way a true representation of the advertisements being circulated by the Respondent.

2.5 The Complainant alleged that the Respondent is involved in deceptive marketing practices in contravention of Section 10 of the Act. That such claims made by the Respondent are

without any competent and reliable scientific evidence. The Complainant stated that such claims give consumers the idea that the Products will work 40% more effectively than any other tyres in the market, which is not a true representation. Moreover, Section 10 of the Act requires that the Respondent, while making any representation, must process and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality-based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence to substantiate that the representation is true. The Commission in its Judgment 2022 CLD 525 held that an undertaking must determine through scientific and reliable evidence that the claims mentioned in respect to the advertised product are not false. In the absence of any such evidence, the same shall be considered false and misleading.

- 2.6 The Complainant stated that the Respondent failed to place reliable scientific evidence, which includes *inter alia* tests, analysis, research, or studies that may have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. This failure on the Respondent's part constitutes deceptive marketing practices. Such actions predominantly, if not estopped at the very outset and the Respondent is allowed to continue advertising its products without any reasonable basis, would ultimately put them at an unfair advantage as the consumers would be inclined towards purchasing their products based on false assertions. Therefore, the actions of the Respondent are against the spirit and objective of the Act which created the Commission to provide free competition in all spheres of commercial and economic efficacy and to protect consumers from anti-competitive behaviors.
- 2.7 The Complainant is of the view that indulging in deceptive and anti-competitive practices hurts the business of the Complainant belonging in the same line of business, i.e., manufacturing of tyres. That the Respondent is portraying such deceptive results of usage of their products, this is resulting in having an unfair competitive advantage over other market players. Thus, the practice of dissemination of wrong information and omission of material information with respect to efficacy of products amounts to adversely impacting other businesses who in all likelihood are not relying on false and misleading claims like the Respondent. That the actions of the Respondent are in violation of competition law which revolves around the rectification of anti-competitive practices. One of the underlying principles, in the competition law remains that of providing adequate protection to consumers. The consumer protection forms a backdrop in the conduct of all proceedings before the Commission.
- 2.8 The Complainant stated that a bare perusal of Section 10 of the Act requires that due heed must be paid to each and every aspect of the advertisements while determining its ability to deceive the consumer or the targeted audience, and any failure to fully comply with the intention and objective of the Act would result in a persistent anti-competitive behavior that is violative of the Act. This has been reaffirmed in many cases, most recently by the Commission in the case cited as 2022 CLD 89. That the usage of phrases such as "40% tak ziada chaley", "40% tak ziada durable, safe and reliable", "kam ghissay, , "grip service jese tu fikar kесе" and all the other marketing maneuvers pertaining to the durability of its

tyres by the Respondent creates a deceptive impression and it is hereby highlighted that effect of particular words used in the advertisements are to be looked at in conjunction with the overall impression of the advertisements in question and if the claim is quantifiable by virtue of data or evidence then it no longer remains a subjective exaggeration, rather, it becomes a factual representation and actionable.

- 2.9 The Complainant mentioned that the defense of puffery cannot be resorted to by the Respondent as that has its own limitations which are very much applicable in the instant matter as well. It was held in the case reported as **2021 CLD 592** that the doctrine of puffery is dynamic to some extent, instead of being statically dependent on a few particular words, which are unquantifiable in one case can be quantifiable in another case;
- 2.10 Furthermore, it will not be out of place to mention that an advertisement is deceptive where it contains false or misleading statement or omits information that is likely to mislead consumers in ordinary circumstances; and the material advertised therein is significant to influence any consumer's decision to buy or use that product. It was held in Judgment cited as **2021 CLD 484** that while evaluating the instance of deception, the Commission will take the perspective of an ordinary consumer and proof of the actual deception is not required per se.
- 2.11 The Complainant submitted that the abrasion resistance of tyres is measured in order to quantify how well they resist wear and tear during their actual service. Abrasion is a compelling metric that is used to determine the life and longevity of any tyre upon its usage by a consumer. It is also an effective measure to ascertain the durability and life of the products. While testing, the Testing Lab considers the wear and abrasion of tyres, the surface loss of rubber material that occurs during rolling and sliding contact of tyres with road tracks. In order to calculate this resistance, mass loss and density of test piece is measured through testing equipment and then Relative Volume Loss of test piece is calculated in mm<sup>3</sup>. If the test results in a low amount of volume loss, it denotes that the product is superior in quality and durability and vice versa.
- 2.12 The Complainant submits that it has recently conducted various abrasion tests on tyres of different categories from SGS Laboratories. It is pertinent to mention that the Respondent has also engaged services of the same testing and inspection lab for the purposes of its various endeavors. In view of the test results, a comparison report has been prepared by the Complainant, thereby manifesting the difference between the abrasion of its tyres with that of the Respondent's tyres and some other competitors as well. The same has been reproduced below:

Report No. SGS	Size	Manufacturer	Brand	Abrasion (Volume Loss mm <sup>3</sup> )
2142024625	2.50-17	Panther	MB Heavy Duty	200
2142024627	2.50-17	Panther	Panther Power	199.8

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2142024626	2.50-17	Panther	Panther Power Plus	199.7
<b>Average Results</b>				<b>199.8</b>
2142024629	2.50-17	Service Ind	Cheetah	223
2142024630	2.50-17	Service Ind	Long Life	195
2142024631	2.50-17	Service Ind	Long Life	214
<b>Average Results</b>				<b>210</b>

2.13 In addition to the above, the Complainant has also conducted various abrasion tests from another independent and internationally recognized inspection laboratory on its tyres of different categories and has appended the test results along with this Complaint as well to illustrate the same. Moreover, a comparison report has been prepared by the Complainant, thereby manifesting the difference amongst the abrasion of its tyres with that of the Respondent's tyres and some other competitors as well. The same has been reproduced below:

<b>Abrasion Comparison Test Report (Bureau Veritas Lab)</b>				
Report #	Size	Manufacturer	Brand / Design	Abrasion (Volume Loss in mm <sup>3</sup> )
1	2.25-17	Panther	Nylo Grip 6PR	172.4
2	2.50-17	Panther	Panther Power 6PR	186.8
3	3.00-17	Panther	Heavy Duty MB 6PR	167.2
<b>Average</b>				<b>175.5</b>
1	2.25-17	Service	Long Life 4PR	178.0
2	2.25-17	Service	Cheetah 6PR	174.1
3	3.00-17	Service	Long Life 6PR	173.7
<b>Average</b>				<b>175.3</b>
1	2.25-17	Diamond	Jumbo 6PR	186.7
2	2.50-17	Diamond	Altis 6PR	153.0
3	3.00-17	Diamond	Delta 6PR	150.3
<b>Average</b>				<b>163.3</b>
1	2.25-17	GTR (General Tyre)	Hyper Sonic 6PR	141.1

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2	2.50-17	GTR (General Tyre)	Hyper Sonic 6PR	89.6
3	3.00-17	GTR (General Tyre)	Cobra 6PR	108.8
<b>Average</b>				<b>113.2</b>

- 2.14 The Complainant stated that as per research agency, namely Aftab Associates, engaged by the Respondent in a separate matter against the Complainant, it is evident that the Complainant Company's motorcycle tyres are superior in 9 attributes against 17 attributes presented in the report that has been placed on record by the Respondent itself. As per this report, Complainant's brand tyres are superior to that of the Respondent in terms of better road grip, less puncture, no wobbling, fair tyre thickness, and tyre color and in good tread designs as well. This endorsement has been made by the third-party consultant engaged by the Respondent and is therefore testament to the fact that Complainant's tyres are boasting a superior quality, hence the claims of 40% better being asserted by the Respondent are nothing more than a misconceived delusion that is being fed to the masses and therefore merits immediate intervention by this Learned Commission.
- 2.15 The Complainant stated that the Respondent has submitted test reports conducted by another multinational testing and inspection company that operates in the name and style of SGS Laboratories. The results emanating from the test reports of SGS Laboratories further solidify Complainant's contentions raised supra. This also highlights that instead of being 40% better than any other brand of tyre, the reality is that the Respondent underperforms various other brands of tyres in terms of abrasion. This implies that its tyres do not last 40% longer than all other brands and such claims being put forward by it are a blatant falsity.
- 2.16 The Complainant respectfully prayed that the Commission:
- (a) Initiate Proceedings against the Respondent for acting in contravention of Section 10 of the Act for deceptive marketing practices and any other provisions;
  - (b) Declare the actions of the Respondent highlighted above to be in breach of Section 10 and preamble of Act;
  - (c) Direct the Respondent to commit to suitable and sufficient commitments, which may appropriately resolve any competition concerns and permanently restrain from using misleading advertisements such as the six claims mentioned in the Complaint, and all the other marketing maneuvers pertaining to the durability of the Respondent's tyres;

- (d) In the interim, restrain the Respondent from using such misleading advertisements;
- (e) Grant any other relief that may be deemed fit and proper by this Commission in the circumstances of the case.

### **3. RESPONDENT'S COMMENTS:**

- 3.1 The Complaint was forwarded to the Respondent on February 02, 2023 for reply to the allegations leveled in the complaint. The Respondent didn't reply and a reminder dated February 22, 2023, was sent. The Respondent via letter dated February 24, 2023, requested for extension, which was duly granted vide letter dated March 01, 2023. The Respondent didn't reply in the stipulated period. Therefore, a final reminder dated March 15, 2023, was sent. The Respondent submitted its reply v ide letter dated March 17, 2023, which is summarized below.
- 3.2 The Respondent stated that the Complainant has come to the Commission with unclean hands and ulterior motives. The Complaint under reply has been filed to arm twist, blackmail and to counter the Complaint No. 455/2022 titled "Service Industries Limited Vs. Panther Tyres Limited". Moreover, the Complaint does not reveal the correct factual position. The contents of the Complaint under reply are incorrect, untrue, vague, fallacious, unwarranted and do not disclose any cause of action. Each and every allegation, assertion, and/or insinuation expressly or impliedly made in the Complaint, is vehemently denied. The Complainant has not narrated true facts in the Complaint, hence, the same is liable to be dismissed. The true facts are as under:
  - a. The Respondent was established in 1953 and started its business in manufacturing shoes. Later in 1970's, it pioneered manufacturing bicycle tyres and tubes in Pakistan. Currently, the Respondent manufactures tyres for tractors, motorcycles, rickshaws and bicycles in Pakistan along with other allied products.
  - b. The SGS is a Swiss company headquartered in Geneva, Switzerland and provides inspection, verification, testing and certification services, and provides a facility to conduct abrasion tests in Pakistan.
  - c. The Respondent also runs an in-house laboratory that conducts abrasion tests on tyres, and is accredited with Pakistan National Accreditation Council, Ministry of Science and Technology, Government of Pakistan. The tests are conducted in accordance with International Standard ISO 4649.
- 3.3 Regarding the abrasion test, the Respondent stated that the abrasion tests refer to tests conducted on the tread being the outer rubber part of a tyre. A small piece of tread is cut out and placed on a machine. The machine runs that piece against an abrasive surface for some time and the tread loss is calculated at the end of the test. It is submitted that the tyre

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is supported by a cord inlaid on the inner side of the tyre and prior to testing, special care is taken to remove the cord from the piece of tread which is being tested. If the cord is not removed, it strengthens the tyre and the tests conducted do not correctly calculate the abrasion of the tread.

- 3.4 The Respondent mentioned that it conducted abrasion tests of its motorcycle tyres, in its laboratory in September 2017. Accordingly, its motorcycle tyres were far more durable and up to 40% more abrasion resistant than those of its competitors. Furthermore, the Respondent requested the SGS to conduct abrasion tests to gauge a comparison between motorcycle tyres manufactured by the Respondent and its top competitors including the tyres manufactured by the Complainant, which were conducted on 27-02-2018. Similar abrasion tests were also conducted by the Respondent's own laboratories in February and July 2018 between the Respondent and its top competitors. A comparison of reports obtained from both these laboratories showed that the motorcycle tyres manufactured by the Respondent were up to 40% more abrasion resistant than those of its top competitors i.e. the Complainant and Diamond Tyres.
- 3.5 Moreover, keeping in view the aforesaid tests conducted in 2017 and 2018, the Respondent made a conservative claim that its motorcycle tyres are up to 40% more abrasion resistant than its competitors, and an advertisement containing such a claim was prepared. Although, the advertisement was ready to be aired by July 2018. However, there was apprehension that the general elections will overshadow this advertisement campaign. Therefore, it was delayed. It is pertinent to mention that the highest sale of motorcycle tyres are attained during April to July and that is the best period to start an advertisement campaign. Hence the advertisement campaign was postponed till April 2019.
- 3.6 The Respondent once again conducted abrasion tests in December 2018 in its own laboratories, and also got the tests conducted from SGS. The tests conducted by its own laboratories showed that the motorcycle tyres manufactured by the Respondent were far more abrasion resistant and durable than those of its competitors making them superior in quality and clearly showed that the motorcycle tyres manufactured by the Respondent were up to 40% more abrasion resistant than that of its afore referred top competitors. However, this time the tests conducted by SGS varied from the Respondent's own laboratory results. This was taken up with SGS, which conceded that the variance was attributable to the fact that the cord was not removed from the tread samples used by SGS while conducting the abrasion tests. As stated earlier non-removal of the cord from the sample gives the tread more strength, hence, the tread abrasion is not properly calculated in the abrasion test conducted. Therefore, the Respondent discarded the tests conducted by SGS.
- 3.7 In March 2019, the Respondent's Laboratories conducted abrasion tests of own and its competitors' tyres. These results confirmed the past results of being up to 40% more abrasion resistant than competitors.

- 3.8 The Respondent stated that since the abrasion tests of 2018- 2019 had confirmed that the motorcycle tyres manufactured by the Respondent were up to 40% more abrasion resistant than its competitors, the advertisement claim was run in an advertisement campaign on the electronic media claiming that "Service tyres lagao, yeh chalney hain aam tyre ke muqabley mein 40% tak zayada". The Advertisement was aired and run on the electronic media in April, 2019. Similarly, based on the aforesaid tests, an advertisement campaign was also run in the form of posters at the retail outlets making similar claims that the motorcycle tyres manufactured by the Respondent are more abrasion resistant than its competitors. For Example:
- (i) "Kam ghisey 40% tak zayada challey"
  - (ii) "A tyre known for its superior grip which lasts up to 40% longer"
  - (iii) "Service tyres 40% tak zayada chaley"
  - (iv) "Up to 40% extra mileage"
- 3.9 The Respondent mentioned that subsequent to the advertisement campaign, it conducted abrasion tests from its own laboratories in January 2020, April 2021 and February 2022, which confirmed that Respondent's tyres were up to 40% more abrasion resistant than that of its competitors.
- 3.10 The Respondent stated that on 06-09-2022, it has conducted abrasion tests on samples of motorcycle tyres of the Respondent's competitors, which portrayed dissimilar results than those conducted in 2018. A brief glance over the results show that due to running of the advertisement campaign and consumer awareness about tyre quality, the Respondents' competitors had improved the quality of their tyres, owing to which the claim of the Respondent motorcycle tyres manufactured by it are up to 40% more abrasion resistant than its competitors, did not any longer hold true. In order to verify and confirm the tests conducted by the Respondent's own laboratories, it immediately requested the SGS to conduct similar abrasion tests and the SGS test reports dated 14-09-2022 yielded the same results.
- 3.11 The Respondent stated that without any delay, vide email dated 15-09-2022 directed its media manager to stop airing the electronic advertisement with immediate effect. Furthermore, the Respondent vide its circular dated 15-09-2022 also issued instructions to its Distributors/Field Staff to remove advertisements containing the slogan as detailed in para (3.9) above on urgent basis. Hence, in view of the above facts, the Complaint in question is liable to be dismissed being unwarranted, mala fide and false and relates to a past and closed transaction and no violation of law can be attributed to the Respondent.
- 3.12 The Respondent stated that since 15-09-2022, it has not placed any electronic advertisement on its website or social media page and all such advertisements have been deleted from the said pages. The Complaint refers to certain advertisements placed on the Facebook page of the Respondent carrying the claim in question. It is submitted that as per

practice, the Respondent places four (4) new advertisements every week on its Facebook page. The advertisements referred to in the complaint were posted prior to September 2022 and can be found very low down in the list amongst numerous other advertisements. It is submitted that this is the reason why these advertisements were not on the Respondent's radar and were not taken off the Facebook page and any such omission is inadvertent. It is however, submitted that it is a tedious exercise to find these advertisements (which the Complainant undertook only to substantiate the allegations levelled in the complaint under reply) which an ordinary consumer will not undertake. Hence, these posts do not tend to offend the law and can hardly be termed as an advertisement. The Respondent further submitted that the said posts are not being deleted by the Respondent at the time of filing of this reply, because if the same are once deleted, the Commission would not be able to see the placement of these advertisements at the Respondent's Facebook page. It is submitted that once the Commission has perused the placement of the said advertisements the same will be deleted by the Respondent immediately. In this regard, a separate application is being filed requesting the Commission to peruse placement of the said advertisement on a priority basis so that the same may be deleted at the earliest.

3.13 The Respondent submitted that the link <https://www.youtube.com/watch?v=CMORUKgLJHY> provided in the Complaint under reply is not from the Respondent's web or social media page but belongs to "The Crew Films". The Crew Films is an entity that had made this electronic advertisement along with other advertisements that it has created and has placed the same on its page to advertise its own business. It is submitted and clarified that the advertisement in question has not been placed at the "The Crew Films" page at the Respondent's request. It is also submitted that this advertisement was placed on this page in May 2022 and is currently located at No. 13 amongst other advertisements. It is further submitted that the Respondent vide its email dated 08-03-2023 has requested "The Crew Films" to remove the said advertisement from its page which in response vide email dated 09-03-2023 has confirmed that the same has been removed.

3.14 The Respondent further submitted that process of manufacturing of its motorcycle tyres is done through specialized imported machines. The Mother Equipment used by the Respondent for manufacturing of tyres (including motorcycle tyres) are imported from Germany and Italy. The details are as follows:-

a) **Mixing Machines:**

The mixing machines mix the rubber compounds and are the most important machines during the manufacturing process. The Respondent is using mixing machines manufactured by HF Mixing Group, Germany since 2005. Due to their outstanding dispersion and distribution qualities these machines are the preferred choice for multi-step mixing process. The Respondent currently uses four of these machines, namely F-160 (procured in 2005), BM 305N (procured in 2014), BM 440N (procured in 2017) and BM 440N (procured in 2023).

In addition the Respondent has also acquired NST Rotor (New Synchronized Technology Rotor) from Germany in 2017 from Mixing Group, Germany, which is a new technology for improving the dispersion of mixing compounds. This made the Respondent the first entity to obtain such a technology in Pakistan.

b) **Tyre Endurance Tester:**

In order to assess performance of tyres numerous tests are conducted on the tyres on imported machines from Germany. The tests include endurance test, dynamic growth test, run out test, rolling resistance test, tyre heat buildup, slip/camber angle test, load range, speed range.

c) **Roll Calendar:**

The Respondent is using 4-roll calendar line purchased from Comerio, Italy. This Calendar line primarily applies the formulated rubber compound to both sides of the nylon cord at a specific thickness. This process creates a rubber fabric that is then cut on separate machine.

- 3.15 It is further submitted that the Respondent has also procured equipment for its laboratory from Germany, USA and Europe since 2014 for testing the tyres manufactured. The Enquiry Officers are welcome to visit the factory of the Respondent at Gujarat to verify these facts. Therefore, the claim that Respondent's motorcycle tyres are made from German Technology is not false. Any assertion in the Complaint to the contrary is denied.
- 3.16 The Respondent stated that the Complainant in the compliant under reply has also objected to the statement made by the Respondent "Grip service jesi to fiqar kaisi". It is submitted that the Complaint discloses no ground for challenging the said statement. It is submitted that the statement is not a quantifiable claim, hence, it does not violate the law. The Respondent vehemently stated that the Complainant has annexed, relied upon and tried to derive support from the latest reports from SGS Laboratories dated 05-12-2022, Bureau Veritas dated 03-01-2023 and SGS Laboratories (filed by the Respondent in Complaint No. 455/2022 titled "Service Industries Limited Vs. Panther Tyres Limited") of September 2022. The Respondent reiterated that the claim in question was based on test reports from the its own laboratories and SGS Reports conducted in the year 2018-2019 as stated above and reliance on the latest reports does not help the Complainant. It is further reiterated that due to running of the advertisement campaign and consumer awareness about tyre quality, the Respondents' competitors improved the quality of their tyres and immediately upon coming to know about the September 2022 Abrasion Tests, the Respondent ceased to advertise the claim in question.
- 3.17 The Respondent mentioned that M/s. Aftab Associates (Pvt.) Limited is one of the oldest, full service Market Research Agency in Pakistan. It is known for conducting large scale surveys led by a team of experienced quantitative and qualitative researchers. M/s. Aftab Associates (Pvt.) Limited conducted a survey of tyres and tubes manufacturers in Pakistan

and presented its "Campaign Evaluation Study" in August 2022 to the Respondent. A perusal of this Study reflects that tyres and tubes manufactured by the Respondent are superior to its competitors including the Undertaking in terms of top mind awareness; total unaided awareness; currently used brands, performance rating of tyres; and brand attributes rating. It is submitted that this study suggests that the tyres manufactured by the Respondent are a more trustworthy brand being more durable and long-lasting which supports the case of the Respondent. However, without prejudice, it is submitted that this study is based on interviews done by the said Agency with the stakeholders i.e. consumers and retailers. The claim in question was not based on the said study but was based on the Abrasion Tests Results of 2018-2019 and has no nexus with the claim in question, hence, reliance on this study by the Complainant is unfounded and baseless.

- 3.18 Moreover, on the merits of the Complaint, the Respondent vehemently denied the herein reproduced para 2.3 to 2.16 being vague and misconceived. Furthermore, the Respondent respectfully prayed that the Complaint may kindly be dismissed.

#### **4. REJOINDER:**

- 4.1 The reply of the Respondent was forwarded to the Complainant for its comments/rejoinder vide letter dated March 20, 2023. The Complainant via email dated April 03, 2023, which was duly granted via email dated April 03, 2023. The Complainant submitted its rejoinder vide letter dated Nil, the contents of which are reproduced in the following paras.
- 4.2 Initially the Complainant raised preliminary objections. The Complainant stated that the contents of the reply filed by the Respondent are self-contradictory at the very outset. The same are not only misleading but are an attempt at making a mockery of this entire adjudicatory process. The Complainant has filed a complaint against the Respondent on account of being involved in dissemination of false and misleading information to the consumers through the adoption of various marketing strategies that revolve around absolute and exaggerated claims, as mentioned in the complaint, regarding their product's quality, characteristics, and properties.
- 4.3 Furthermore, in addition to the above, the Respondent also created a false impression to the extent of the technology that is being used by them for their tyres i.e., German technology. However, it is ardently submitted that no company in Pakistan possesses the infrastructure or expertise for the same and the Respondent is involved in grave fabrication only to dupe the general public into purchasing their products that are in no way a true representation of the advertisements that are being circulated by the Respondent.
- 4.4 The Complainant mentioned that the Respondent through their reply have attempted to bring about a challenge to the contents of the complaint primarily on two grounds, firstly that the aforementioned marketing campaign that they have admittedly ran till September 2022, was allegedly based on the Abrasion Tests Results of 2018 – 2019 and secondly, that

- the Respondent has apparently imported some machines from Germany that allows them to produce their tyres using German technology. Moreover, the Respondent has conveniently appended test results conducted by it at its own lab and throughout the duration of it having ran the fabricated advertisement campaign, i.e., from April 2019 till September 2022, the only Abrasion Tests Results that it has relied upon or that support its claim are the ones conducted by it at its own lab. The fact that there are no independent lab results that concur with the contentions of the Respondent is in itself a validation of the Complainant's stance and is a manifestation of the amount of care, or lack thereof, that was invested by the Respondent prior to running his faux media campaign, especially in reference to its tyres allegedly lasting 40% longer than any other tyres.
- 4.5 The Complainant stated that the Respondent commenced its media campaign in April 2019, they ought to have had fresh abrasion tests of their tyres conducted again by some independent labs at that point rather than placing reliance on year old analysis especially since the entire campaign of the Respondent centered around its tyre's durability being better than its competitors. However, the Respondent not only failed to undertake fresh abrasion tests from an independent lab, but the last available abrasion test report from an independent lab that the Respondent has appended along with his reply is from December 2018 that was conducted by SGS Laboratories and that too has illustrated results contrary to the stance raised by the Respondent. A bare perusal of the summary of the tests makes it evident that the Respondent's tyres are up to 35% inferior in durability when compared with its competitors, let alone being superior to its competitors' tyres.
- 4.6 Moreover, as per the Complainant the Respondent has attempted to mislead this Learned Commission by constantly placing reliance on test reports conducted by its own labs and not by any independent labs. It is astonishing that from December 2018 till September 2022, for almost four (4) years the Respondent did not get its tyres examined by any independent laboratory and based its entire media campaign for almost half a decade on its own lab results which is bizarre and a testament to the very deceptive practices that the Respondent stands accused of.
- 4.7 The Respondent got its tyres examined and tested again by SGS Laboratories in September 2022 and it reiterated its earlier findings, thus solidifying the contentions raised by the Complainant through its complaint. Hence, there nothing has been brought on record by the Respondent to certify its claim that its tyres are 40% superior to its competitors'. Even otherwise, the abrasion tests that were undertaken by the Respondent at its own labs also do not support their claim that their tyres are up to 40% superior to its competitors. The summaries of the tests that have been appended along with the reply are detrimental to the Respondent's own claims.
- 4.8 The Complainant submitted that without prejudice to the above, it is hereby stated that the abrasion performance is largely dependent on the recipe of raw material mix and by changing the raw material mix, different abrasion results can be achieved. This means that for any entity to improve or alter their abrasion results, changes may be made to the raw material mix and that shall change the results of the abrasion test within a matter of days. Therefore, achieving excellence in abrasion results is not something that can last for years,

as per the Respondent's contentions, and in no way can such a lasting competitive edge be achieved by an entity/company while keeping others oblivious. It is for such reasons that many different companies, like Ghauri Tyre, Crown Tyre, Diamond Tyre still manage to showcase better abrasion results than that of the Respondent despite having a 10-year-old technology and not the same advancements that other competitors in the industry possess.

- 4.9 It is further submitted by the Complainant that the Respondent cannot make any claims in respect to its products without providing competent and reliable scientific evidence because such claims as have been made by the Respondent give the consumers the idea that they can use the products and it will work 40% more effectively than any other tyre in the market, which is not a true representation of the prevalent factual scenario.
- 4.10 The Respondent failed to place reliance on scientific evidence which, includes *inter alia* tests, analysis, research, or studies that may have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. This failure on Respondent's part constitutes deceptive marketing practices. These deceptive marketing practices are likely to put the Respondent at an unfair advantage as the consumers would be inclined towards purchasing their products based on their false assertions. Therefore, the contents of the reply submitted by the Respondent fail to duly address the concerns raised by the Complainant through its complaint and the Learned Commission is urged to reject the same at the very outset.
- 4.11 In addition to the above, the Complainant mentioned that there are more than 100 Stock Keeping Units (SKUs) of motorcycle tyres being produced by various tyre manufacturers having different weight, design, sizes, quality, and specifications altogether. Each of these SKUs have different abrasion values depending on their intended end usage. A keen perusal of the different reports submitted by the Respondent highlights the discrepancy therein that the comparison that it is intending to illustrate through its test reports of different SKU is not actually comparable. This is further elaborated by virtue of the table below:

Size	Leading Brand of Service	Leading Brand of Panther	Actually Used in Tests
2.25-17	Long Life	Nylon Grip	"Heavy Duty" brand tyre of Panther has been used by Respondent in comparison whereas no test was conducted on "Nylon Grip" brand which contribute more than 50% in the sales of Complainant in 2.25-17 category.

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2.50-17	Winner	Victor/Bravo	Again "Heavy Duty" brand sample was selected instead of Victor/Bravo which are the comparable brand of "Winner".
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- 4.12 As per Complainant assertion the Respondent has continued its practice of dissemination of wrong information and omission of material information in its test results as well that it has allegedly conducted at its own premises without any oversight by a neutral third-party. This manifests from the fact that Cheetah and Panther Power are the leading brands of Respondent and Complainant, respectively. The said brands contribute more than 40% in the total sales of the Companies in 2.50-17 category, but no test results were conducted in respect to any of these specific brands during the faux media campaign period starting from April 2019 to September 2022. This makes it evident that the very process of sample selection done by the Respondent is flawed at the very outset and fails to adhere the basic principles when sampling. It has transpired from a deeper analysis of the Abrasion Test Results appended by the Respondent along with his reply that it has employed an arbitrary pick and choose mechanism with no reasonable basis whatsoever and through that approach the Respondent has deceptively tried to compare only those sample products of the competitors which give inferior results to the products of the Respondent. Thus, the defective sampling done by the Respondent has rendered the veracity of its abrasion test results to be nugatory.
- 4.13 Another faux claim made by the Respondent has been the alleged usage of German technology when producing its tyres. In this regard, the Respondent Company is trying to justify the 'German Technology' claim by giving the false and fabricated reasons as well. The phrase German Technology has been strategically employed by the Respondent and is a continuity of their deceptive marketing practices in violation of Act. The Respondent is attempting to give the impression that it is producing tyres with machinery, scientific knowledge, processes, and techniques being used by German Tyre manufacturers, whereas the reality is very different and has been admitted by the Respondent in their reply as well.
- 4.14 The only rationale offered by the Respondent is that it is in possession of mixing machines and testing tools that have been procured from Germany. However, it is hereby apprised that the tyre production process comprises of six integral stages of manufacturing, i.e., **Mixing, Extrusion, Calendaring, Bead Building, Tyre Building/Assembly and Curing.** The Respondent Company, being in the tyre manufacturing business for decades now and being fully aware of these processes, has been using the so-called German Technology only in reference to one stage i.e., Mixing which forms only a small portion of the entire manufacturing process. In such circumstances, the Respondent's demeanor is nothing more than a flagrant exploitation of the consumers through illusory and deceptive marketing techniques which is to be severely reprimanded by this Learned Commission.

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- 4.15 The Complainant mentioned that the term 'technology' entails the scientific knowledge, techniques, production protocols and processes with which a product is produced. The Respondent has not imported any such 'technology' from any of the German Tyre manufacturers which further solidifies the Complainant's claim that the usage of the term "German Technology" is frivolous and misleading in its entirety. In the interest of complete justice, it is ardently submitted that no tyre manufacturer in Pakistan possesses the infrastructure or expertise for the same and the Respondent is involved in grave fabrication only to dupe the general public into purchasing their products.
- 4.16 The Respondent has tacitly admitted that its tyres are not 40% more durable than its competitors', as illustrated by the latest Abrasion Tests Results as well and has admitted that its social media pages kept advertising such misleading media campaigns even after it had come to their knowledge through the latest test results. The Respondent, however, has concealed from this Learned Commission that the deceptive marketing practices of the Respondent were not just limited to electronic modes but was also being advertised on billboards around the country that were then removed following the filing of the instant complaint. In this regard, the Complainant has proof of this as well which can be provided to this Learned Commission if and when required. Therefore, the entire conduct of the Respondent, admittedly so, has been violative of the relevant provisions of the Act and the Respondent be appropriately penalized for the same.
- 4.17 The Complainant stated that the Respondent in the course of these proceedings has attempted to malign an independent and globally celebrated testing service as well i.e., SGS Laboratories which has an experience of over 140 years and has been providing state of the art laboratories and testing services in a broad range of sectors. The Respondent, in its reply has tried to blame SGS Laboratories by stating that the test results for December 2018 were not done in the proper way and the same was apparently conceded by SGS Laboratories as well. Firstly, no such proof of such a statement being made by SGS Laboratories has been brought on record by the Respondent, Secondly, the concerned lab has been operating since 1952 in Pakistan and has been functioning since then. They are very much aware of how to undertake different evaluating processes for verifying the quality of different products and do not need to be steered by the Respondent in any way.
- 4.18 The actions of the Respondent are in violation of the Act which revolves around the rectification of anti-competitive practices, one of the underlying principles therein remains that of providing adequate protection to consumers in other words, consumers protection forms a backdrop in the conduct of all proceedings before the Commission. The actions of the Respondent are against the spirit and objective of the Act which established this Learned Commission to provide free competition in all spheres of commercial and economic efficacy and to protect consumers from anti-competitive behaviour. The machinery of this Learned Commission thus needs to come into motion against the Respondent with an iron fist.
- 4.19 Secondly, the Complainant submitted its reply on the merits of this case and denied the contents of para (3.2 & 3.3) above, at the very outset. The complaint instituted by the

Complainant has been done in a bona fide manner and with no ulterior motive whatsoever. The acts of the Respondent are not only anti-competitive but are misleading for the public as well. It is for such reasons that the Respondent needs to be stopped in its tracks and reprimanded for the misguided media campaign that it has ran for over four years without any scientific evidence backing its sham claims.

- 4.20 The Complainant vehemently denied the contents of para (3.4) above, for being false, fictitious, and fallacious. The factual position being portrayed by the Respondent is not only flawed but is rather deceptive. The Respondent has conceded that its tyres are not 40% better or last longer than its competitors, which has been concurred by the Abrasion Test Results conducted in December 2018 and September 2022 by an independent testing laboratory, namely, SGS Laboratories. The test results verify the contentions put forth by the Complainant and consequently the Respondent has attempted to create a false narrative that the Abrasion Tests had not been performed properly by the independent labs, even though it is an admitted fact that the same labs have been engaged in business of providing testing services over a broad range of products for many past decades, however just to conceal their own defects, the Respondent has maligned the credibility of the independent testing labs that illustrated the reality of Respondent's deceptive marketing practices. Astonishingly so, the Respondent ran the marketing campaign for more than three years and during the entire length of its campaign, it conducted only 3 abrasion tests and that too from its in-house labs. For a considerable amount of time, despite having the unfavorable Abrasion Test Results from SGS Laboratories in December 2018, the Respondent did not feel the need to have its tyres analyzed and tested by an independent testing laboratory. This accentuates the mala fide of the Respondent even further. The Respondent has admitted that the durability of its tyres is not better than its competitors', however, it has tacitly conceded that despite having such information it failed to remove the relevant advertisements from its social media platforms, as well as its electronic media agents.
- 4.21 The Complainant denied the content of para (3.11 to 3.15) above, for being fallacious and farcical. The Respondent has conveniently tried to evade liability and cover its wrongdoings by trivializing the violations committed by it in form of failure to halt its marketing campaign even after it became aware of the SGS Laboratory Test Results in September 2022. Moreover, its failure and incompetence to have its electronic media advertisement agent remove the deceptive advertisement in a timely manner has also been acceded to by the Respondent, thus it merits a suitable and befitting disciplinary action against the Respondent as it is. The Respondent is attempting to give the impression that it is producing tyres with machinery, scientific knowledge, processes, and techniques being used by German Tyre manufacturers, whereas the reality is very different and has been admitted by the Respondent as well. The Complainant reiterated the same mentioned in para (4.14) above.
- 4.22 That the contents of the para (3.16 to 3.18) above are vehemently denied for being incorrect and misleading. The Respondent has attempted to hide its deceptive marketing practices behind technical aspects but has miserably failed to do so. It is hereby submitted that the abrasion performance is largely dependent on the recipe of raw material mix and by

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changing the raw material mix, different abrasion results can be achieved. This means that for any entity to improve or alter their abrasion results, changes may be made to the raw material mix and that shall change the results of the abrasion test within a matter of days. Therefore, achieving excellence in abrasion results is not something that can last for years, as per the Respondent's contentions, and in no way can such a lasting competitive edge be achieved by an entity/company while keeping others oblivious to it for years. Moreover, the Respondent has taken a complete one-eighty on an evaluation study, conducted and relied upon by the Respondent itself in another matter. In this regard, it has gone on to limit the utility or application of the report submitted by M/s Aftab Associates (Pvt.) Ltd, whom the Respondent itself engaged in a separate matter. According to M/s Aftab's report the Complainant's motorcycle tyres are superior in 9 attributes against 17 attributes presented in the report. As per this report, Complainant's brand tyres are superior to that of the Respondent in terms of better road grip, less puncture, no wobbling, fair tyre thickness, tyre color and in good tread designs as well. This endorsement is therefore a testament to the fact that Complainant's tyres are boasting a superior quality. Hence the claims of 40% better being asserted by the Respondent are nothing more than a misconceived delusion that is being fed to the masses and therefore merits immediate intervention by this Learned Commission.

- 4.23 The Complainant respectfully prayed that this Honorable Commission may be pleased to disregard and dismiss the contents of the reply tabled by the Respondent and accept the instant Complaint and grant any other relief that this Learned Forum deems fit and worthy.

## 5. ANALYSIS:

- 5.1 As mentioned in para 1.3 above, the mandate of this enquiry is to find out whether, *prima facie*:
- i. *the conduct of the Respondent is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2(a)) of the Act?*
  - ii. *the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, place of production, properties, and quality of goods in, prima facie, violation of Section 10(1) in general and in particular, Section 10(2) (b) of the Act.*
  - iii. *the Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (c) of the Act, which prohibits false and misleading comparison of goods in the process of advertisement; and/or*
  - iv. *Whether there is a spillover effect of the conduct of the Respondent?*

- 5.2 As a sectoral background, it is stated here that the Pakistan's rubber tyre market attained a volume of nearly 25.03 million units in 2021, driven by increasing vehicle ownership in the country. Aided by favorable government policies, the market is expected to witness a further growth in the forecast period of 2023-2028, growing at a CAGR of 8.76%. The market is projected to reach about 41.43 million units by 2027<sup>1</sup>.
- 5.3 On the basis of vehicle type, the market can be segmented into: a) two-wheeler; and b) three-wheeler tyres, passenger cars/light truck tyres, and heavy commercial and off the road (OTR) tyres. The market, based on segment, can be classified into original equipment manufacturer (OEM) and replacement. Based on market type, the market can be divided into legitimate market and grey market. Based on design, the market can be categorized into radial and bias. The market, based on type, can be divided into tube tyres and tubeless tyres.
- 5.4 Before analyzing the facts, it is important to understand the difference between false and misleading information. The Commission, in its order held against M/s CMPak Limited<sup>2</sup> has defined "False" and "Misleading" information as deceptive marketing practices in the following manners:

**False Information:**

*'False information' can be said to include: oral or written statements or representations that are; (a) contrary to truth or fact and not in accordance with the reality or actuality; (b) usually implies either conscious wrong or culpable negligence; (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation.*

**Misleading Information:**

*"Whereas 'misleading information' may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent."*

- 5.5 The above reference suggests that any information distributed via a marketing campaign can mislead consumers if it is vague in any way or has omitted certain material information, even if such a conduct is not deliberate. Consequently, distribution of false and misleading information is capable of giving a wrong impression with respect to a good or service, which could induce a consumer into distorted decision making, hence, causing consumer

<sup>1</sup> <https://www.expertmarketresearch.com/reports/pakistan-rubber-tyre-market>

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

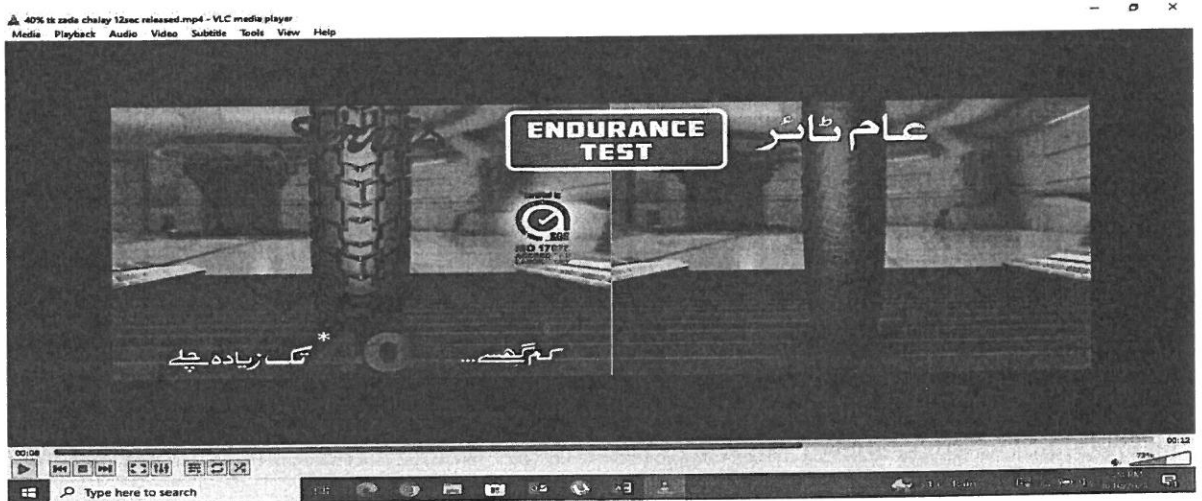
injury. Therefore, if the Respondent's conduct is proven false and misleading, it would amount to deceptive marketing practices in terms of Section 10 of the Act. While analyzing the net general impression of the marketing campaign another important aspect which must be kept into mind is that the advertisement has to be viewed from the point of view of 'a purchaser of average intelligence and imperfect recollection,' which has clearly been defined by the Hon'ble Supreme Court of Pakistan in a Civil Appeals No. 444 & 445 of 2017<sup>3</sup>.

- 5.6 Moreover, we must keep in mind the principle laid down by the Commission in the matter of Zong & Ufone (2010 CLD 1478) that the advertisement has to be viewed as a whole without emphasizing isolated words or phrases apart from their context.

### OVERALL NET GENERAL IMPRESSION OF THE MARKETING CAMPAIGN SLOGAN

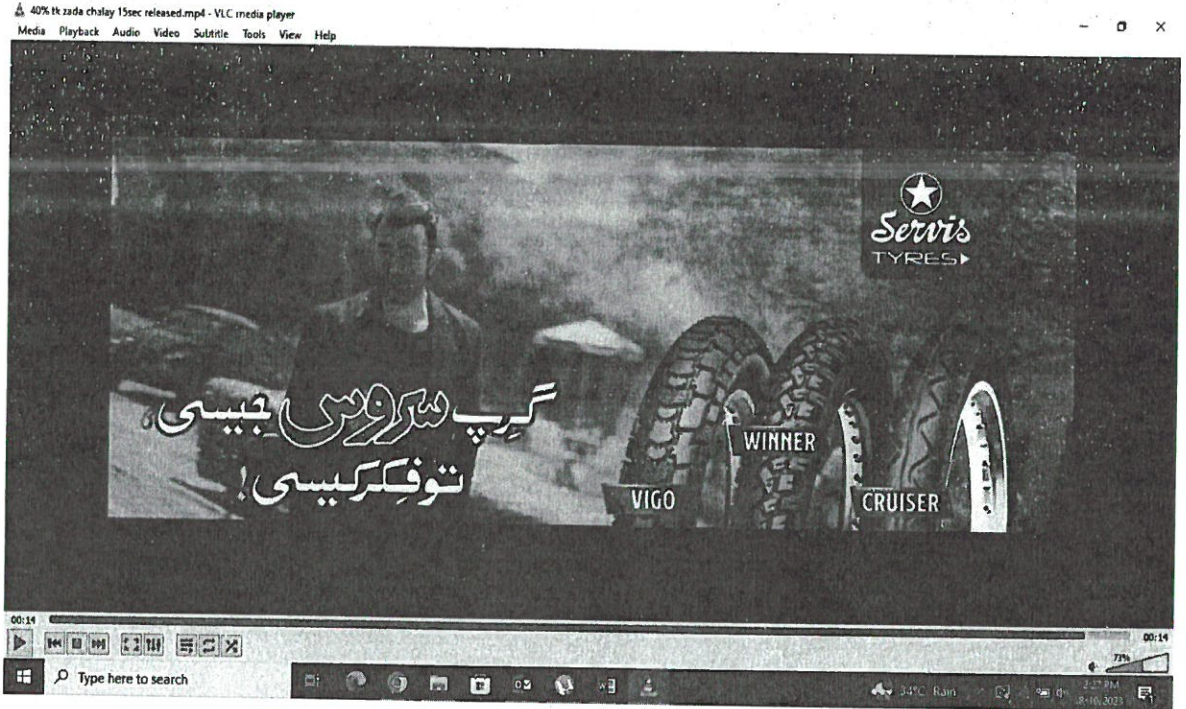
- 5.7 The main allegation against the Respondent is that it is engaged in anti-competitive practice(s) by making a false and misleading, substantial and quantifiable claim regarding its product i.e., tyres as "40% tak ziada chaley", "40% tak ziada durable", "Safe and reliable", "Kam ghissay" and "Grip service jese tu fikar kесе" without there being any independent study/research or report for supporting the claims. In this regard, it is imperative for us to first understand the overall net general impression of the marketing campaign slogans.

- 5.8 The screenshot of the Impugned Advertisement run by the Respondent is provided below for ease of reference:



<sup>3</sup> C.A 444&445/2017-page-09 Para 15

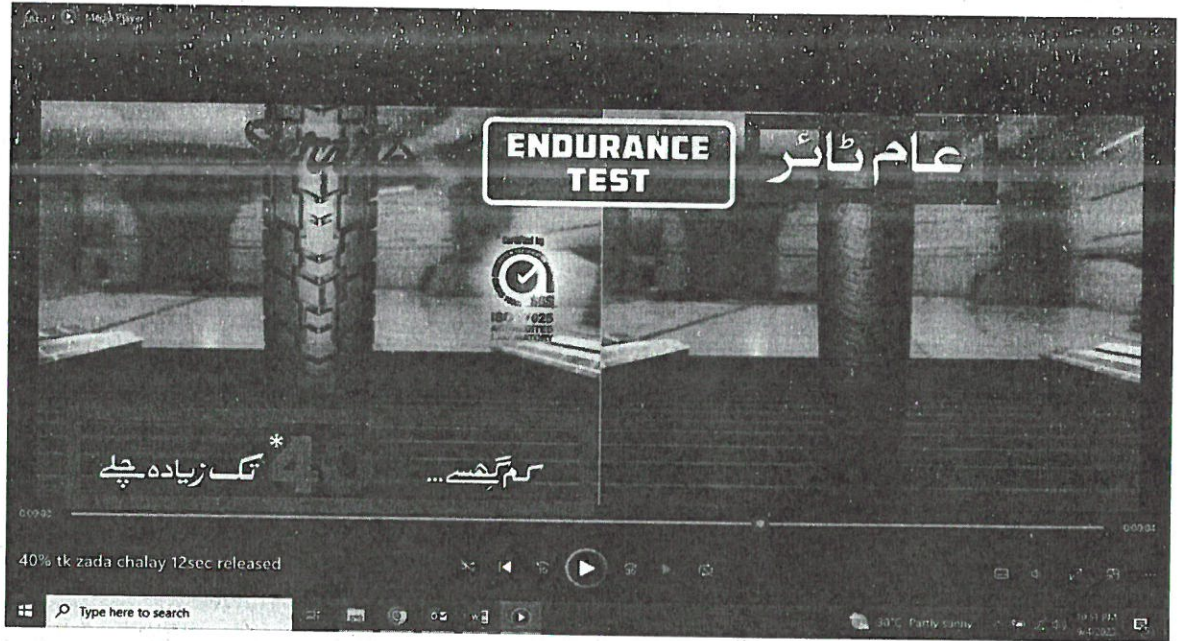
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- 5.9 A perusal of the Marketing Campaign Slogans of the Respondent shows that the Overall Net General Impression is that the Respondent's Products are up to 40% more reliable, safe and durable than those of its competitors. The marketing claims made by the Respondent states that these claims are being made on the basis of SGS test report conducted in February 2018. Thus, the ordinary consumer would be purchasing Respondent's products in the mistaken belief that they are actually up to 40% better, in simple words.
- 5.10 Above mentioned excerpts help us determine that in case of the advertisement under investigation, it is necessary to observe that when the average consumer of the product views the advertisement, the message they receive is that Respondent's tyres are "40% *tak ziada chaley*", "40% *tak ziada durable, Safe and reliable*", "*Kam ghissay*", "40% *ziada chaley*" and "*Grip service jese tu fikar kесе*".
- 5.11 In view of the above, and on the basis of the marketing material used for the campaign by the Respondent, *prima facie*, the overall net general impression of the marketing campaign from the perspective of an 'average consumer' is that the Respondent's tyre is up to 40% more reliable, safe and durable than those of its competitors.

**WHETHER THE RESPONDENT'S MARKETING CAMPAIGN CONSTITUTE, PRIMA FACIE VIOLATION OF SECTION 10 (1) IN GENERAL AND PARTICULAR SECTION 10(2) (a), (b) & (c) OF THE ACT.**

- 5.12 As mentioned in Para 5.5 above, if the Respondent's conduct is proven false and/or misleading, it would amount to deceptive marketing practices in terms of Section 10(1) in general and specifically Section 10(2) (a), (b) & (c) of the Act.
- 5.13 The Complainant alleged that the Respondent is engaged in anti-competitive practice(s) by making a false and/or misleading, absolute and exaggerated claims regarding its product i.e., tyres as **"40% tak ziada chaley"**, **"40% tak ziada durable, Safe and reliable"**, **"Kam ghissay"**, and **"Grip service jese tu fikar kese"** without there being any independent study/research or report for supporting the same. Reference in this regard was made to the video available at URL <https://www.youtube.com/watch?v=CMORUKgLJHY>. Furthermore, the Complainant also alleged that the Respondent also created a false impression to the extent of the technology that is being used by them for their tyres, i.e., "German Technology". However, no company in Pakistan possesses the infrastructure and expertise for the same.
- 5.14 The Respondent in response to the allegations took a stance that the abovementioned claims were being made based on results obtained from **"Abrasion tests"**. The Respondent stated that it is continuously performing Abrasion test in its own laboratory as well as from other independent laboratory, which confirms that the Respondent's tyres are up to 40% more durable, safe and reliable than other competitors in the industry including the Complainant. The Respondent stated that the claims were based on the Abrasion test dated September 2017, February 2018, July 2018, December 2018, March 2019, January 2020, April 2021, February 2022. = Copies of test reports are annexed and marked as **Annexure-A**.
- 5.15 Furthermore, as mentioned in para 3.14 above, the Respondent stated that the German Technology refers to the equipment used in the tyres manufacturing, which are imported mainly from Germany and Italy. Moreover, the equipment used in the process of mixing, checking endurance level and roll calendar are imported from Germany encompassing German Technology.
- 5.16 The Complainant in its rejoinder stated that the Respondent is continuously relying on the abrasion test results of 2018-2019, and based on it has aired the television commercial. Furthermore, the reports on which the Respondent has relied on, is conducted by its own laboratory.
- 5.17 With regards to the claim **"40% tak ziada chaly"**, it must be clarified that the same has been incorrectly reproduced as **"40% ziada chaly"** in the complaint. The Enquiry Committee's findings below will consider whether the claim of **"40% tak ziada chaly"** along with other claims mentioned above in Para 1.2 *ibid*, amounts to a violation of Section 10 of the Act. A screen shot of the alleged advertisement is given below for reference:



- 5.18 In the above-mentioned advertisement, it has been observed that the whole advertisement revolves around one single quantifiable claim, i.e., *Kam Ghissy 40% tak zaida chaly*. Furthermore, the video advertisement and the screenshot above clearly states that a comparison of Respondent's Products has been made with other ordinary tyres available in the market, including the Complainant's tyres. It has further been observed that the word ordinary tyre (عام ٹائر) is being used in the video advertisement. The Respondent, in its reply, has submitted that it has conducted series of abrasion tests from its own testing laboratory along with an independent laboratory namely SGS Pakistan (Private) Limited.
- 5.19 It is important to highlight that while conducting abrasion tests, a small piece of tread is cut out and placed on a machine; the machine runs that piece against an abrasive surface for some time and the tread loss is calculated at the end of the test. It is submitted that the tyre is supported by a cord inlayed on the inner side of the tyre and prior to testing, special care is taken to remove the cord from the piece of tread, which is being tested. If the cord is not removed, it strengthens the tyre and the tests conducted do not correctly calculate the abrasion of the tread.
- 5.20 The test method for abrasion (ISO 4649 / DIN 53516) is actually quite simple. Abrasion resistance is measured by moving a test piece of rubber across the surface of an abrasive sheet mounted on a revolving drum. It is expressed as volume loss in cubic millimeters.
- 5.21 Based on abrasion tests of September 2017, February 2018, July 2018, December 2018 and March 2019, the Respondent started advertisement on electronic and print media in April 2019 with the following claims:
- i. "Kam ghisey 40% tak zayada challey"



- ii. "A tyre known for its superior grip which lasts up to 40% longer"
- iii. "Service tyres 40% tak zayada challey"
- iv. "Grip service jesi to fiker kesi"

5.22 The Respondent has also compiled the test results obtained from SGS laboratory and results from its own laboratory and prepared a comparison report which is given below:

**HEAD OFFICE:**  
 Servis House,  
 Main Gulberg,  
 Lahore-54662 (Pakistan)  
 Tel: +92 423 5751990-6  
 Fax: +92 423 5714930  
 www.servisgroup.com

**KARACHI OFFICE:**  
 10th Floor, Adamjee House,  
 I. Chundrigar Road, Karachi  
 Tel: +92 021 32413443  
 +92 021 32428527

**FACTORIES:**

**1. GUJRAT FACTORY**  
 G.T. Road, Gujrat, Pakistan.  
 Tel: +92 533 724715-18  
 Fax: +92 533 724722

**2. MURIDKE FACTORY**  
 10th K.M.  
 Muridke-Shahpura Road,  
 Mob: +92 300 8644549  
 +92 300 8418209

**Comparison Test Report ( SIL & SGS Lab)**  
 Test Month : Feb-2018

Report No. (SIL)	Report No. (SGS)	Size	Manufacturer	Brand	SIL LAB		SGS LAB	
					Abrasion (Volume Loss mm <sup>3</sup> )	Percentage (%)	Abrasion (Volume Loss mm <sup>3</sup> )	Percentage (%)
<b>2.50 - 17 R</b>								
SIL-3-A	1	2.50 - 17 R	Service Ind.	H Speed	165		242	
SIL-3-B	2	2.50 - 17 R	Panther	Heavy Duty	269	62.9%	236	66.0%
SIL-3-C	3	2.50 - 17 R	Diamond	Englander	240	43.2%	177	25.0%
<b>3.00 - 17 R</b>								
SIL-2-A	4	3.00 - 17 R	Service Ind.	Long Life	167		143	
SIL-2-B	5	3.00 - 17 R	Panther	Heavy Duty	298	71.6%	309	119.3%
SIL-2-C	6	3.00 - 17 R	Diamond	Extreme	225	35.0%	204	43.0%

ABRASION TEST METHOD: ISO 4649:2010

*[Signature]*  
 Prepared by  
 DTN

Attested  
*[Signature]*  
 \*  
**HAZANFAR ALI**  
 CHIEF TECHNICAL MANAGER

*[Signature]*  
 Chief Technical Officer  
 \*  
**HAZANFAR ALI**  
 CHIEF TECHNICAL MANAGER

Similarly, another comparison report is depicted below:

A.A

**HEAD OFFICE:**

Servis House,  
Main Gulberg,  
Lahore-54662 (Pakistan)  
Tel: +92 423 5761890-6  
Fax: +92 423 5714930  
www.servisgroup.com

**KARACHI OFFICE:**

10th Floor, Adamjee House,  
I. Chundriger Road, Karachi  
Tel: +92 021 32413443  
+92 021 32428527

**FACTORIES:**

**1. GILGIT FACTORY**

G.T. Road, Gilgit, Pakistan.  
Tel: +92 833 724716-18  
Fax: +92 833 724722

**2. MURIDKE FACTORY**

10th K.M.,  
Muridke-Sheikhupura Road,  
Mob: +92 300 8644549  
+92 300 8418208

**Comparison Test Report (SIL & SGS Lab)**  
Test Month: Dec-2018

Report No. (SIL)	Report No. (SGS)	Size	Manufacturer	Brand	SIL LAB-TO		SGS LAB	
					Abrasion (Volume Loss mm <sup>3</sup> )	Variance from SIL (%)	Abrasion (Volume Loss mm <sup>3</sup> )	Variance from SIL (%)
<b>2.25-17 F</b>								
SIL-3-A	1	2.25-17 F	Service Ind.	Long Life	343		343	
SIL-3-B	2	2.25-17 F	Panther	Heavy Duty	278	75.0%	291	23.1%
SIL-3-C	3	2.25-17 F	Diamond	Extreme	176	5.0%	197	2.9%
SIL-3-D	4	2.25-17 F	Crown	Solo Grip	233	61.0%	287	6.6%
SIL-3-E	5	2.25-17 F	Ghauri	Classic	203	23.9%	249	-1.6%
SIL-3-F	6	2.25-17 F	General	Hyper Sonic	259	8.7%	179	-8.7%
<b>2.50-17 R</b>								
SIL-3-A	7	2.50-17 R	Service Ind.	Winner	382		359	
SIL-3-B	8	2.50-17 R	Panther	Heavy Duty	271	67.3%	353	3.6%
SIL-3-C	9	2.50-17 R	Diamond	Extreme	194	7.4%	183	26.0%
SIL-3-D	9	2.50-17 R	Crown	Rider	219	25.3%	146	-8.1%
SIL-3-E	10	2.50-17 R	Ghauri	Classic	204	28.0%	185	16.4%
SIL-3-F	10	2.50-17 R	General	Hyper Sonic	166	8.9%	185	16.4%
<b>3.00-17 R</b>								
SIL-3-A	11	3.00-17 R	Service Ind.	Long Life	288		289	
SIL-3-B	12	3.00-17 R	Panther	Heavy Duty	203	77.3%	207	7.6%
SIL-3-C	13	3.00-17 R	Diamond	Delta	209	28.0%	207	2.9%
SIL-3-D	13	3.00-17 R	Crown	Rib Grip	220	25.3%	207	2.9%
SIL-3-E	14	3.00-17 R	Ghauri	Tiger	359	23.9%	221	18.0%
SIL-3-F	14	3.00-17 R	General	Hyper Sonic	167	8.7%	183	-28.4%

ABRASION TEST METHOD: ISO 6469/2014

  
Prepared by  
OTH

  
Attested  
  
GHAZANFAR ALI  
CHIEF TECHNICAL MANAGER

  
Chief Technical Officer  
GHAZANFAR ALI  
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- 5.23 From the above comparison sheet, it has been observed that six (06) tyre brands were tested, and abrasion results were obtained. Variance from the Complainant's products lies in-between 1.2% to 49.1% in the test results conducted in September 2017. Another test results dated February 2018 from SGS showed a variance from Service tyre, which ranges from 25% to 119.3% which again confirmed the Respondent claim.
- 5.24 Similarly, the test results obtained from SGS in December 2018 showed a variance of different tyres with Service tyres, which ranges from -35.4% to 23.1%. Prior to launching the advertisement campaign in April 2019, the Respondent once again tested the products of its competitors from its own laboratory. A variance from Service tyre ranges from 0.9% to 55.4%, which confirmed that the Respondent's Products were up to 40% more abrasion resistant than those of its major competitors.
- 5.25 Based on the above-mentioned test results, the Respondent launched its marketing campaign, and started advertising its Products with a claim, i.e., "service tyre 40% tak zayada challey". The above-mentioned test results obtained from both the laboratories confirmed that Respondent's tyres were up to 40% more abrasion resistance than that of its competitors. It is important to mention here that Commission in its Judgement reported as 2022CLD 525 has held that "an undertaking must determine through scientific and reliable evidence that claims mentioned in respect to the advertised product are not false

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*and in absence of any such evidence, the same shall be considered to be false and misleading”*

- 5.26 The Respondent continued its campaign till September 2022, when it conducted abrasion tests from its own laboratory on samples of motorcycle tyres of its competitors, which portrayed dissimilar results than those conducted in 2018 and onward. In order to verify and confirm the tests conducted by the Respondent’s laboratory, it immediately requested the SGS laboratories to conduct similar abrasion tests and the SGS tests reports dated 14-09-2022 yielded the same results. Therefore, the Respondent voluntarily stopped airing the electronic advertisement with immediate effect and a circular dated 15-09-2022 issued instructions to its distributors/Field Staff to remove advertisements containing the slogans/claims mentioned above in Para 5.19 above. Copy of the circular dated 15-09-2022 is attached and marked as **Annex-B**.
- 5.27 The Complainant’s rejoinder mentions that the Respondent ran the marketing campaign for more than three years, and in this duration, it conducted only three abrasion tests from its in-house labs. Contrary to this, the documents submitted by the Respondent showed two abrasion tests, dated February 2018 & December 2018, were conducted by SGS laboratories. Although, the tests results conducted by SGS laboratories in December 2018, were discarded by the Respondent due to stark variation between two laboratories test results. The Respondent submitted that it has taken up the same issue with SGS laboratory. However, a simple statistical analysis of both test results (SGS & SIL) shows a more than 50% variation in two results, which points some error in SGS test results as submitted by the Respondent.
- 5.28 The Respondent, via email dated September 28, 2023, was asked to share evidence pertaining to written communication with the SGS on the issue of abrasion test results dated December 2018. The Respondent, via email dated October 03, 2023, informed the Enquiry Committee that there was no written communication on the issue. However, the issue was taken up through a visit of our Client's employees to the SGS.
- 5.29 Based on continuous testing till September 06, 2022, from its own laboratory, the Respondent continued its advertisement campaign until it was confirmed through abrasion tests from SGS laboratories that its claim, 40% *tak zayada challey*” no longer holds true. It is important to note that the SIL laboratory results showed that a volume loss of the Complainant’s product was just 2.1% more than the Respondent’s Products whereas, the SGS tests results showed a volume loss of the Complainant’s product was 9.1% more than the Respondent’s Products and a volume loss of other competing products was approx. 53% more than the Respondent’s Products. However, keeping in mind the latest abrasion results and considering the Complainant as major competitor, the Respondent discontinued

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its marketing campaign immediately. Copy of abrasion tests, conducted by SGS in September 2022, is attached and marked as Annexure-C.

- 5.30 In addition to the above, the Respondent's marketing campaign includes another statement, i.e., "Grip Service *jesi to fiker kesi*", which has also been objected by the Complainant. However, no grounds for challenging the above-mentioned statement were provided in the complaint. In any case, the Respondent submits that the statement is not a quantifiable claim, hence, it does not violate the law.
- 5.31 In this regard, it is important to understand the difference between 'quantifiable claims' and 'general subjective statements'. The Commission in its General Guidelines on deceptive marketing practices has described the meanings of puffery as:

*"A statement is considered puffery if the claim is extremely unlikely to induce consumer reliance."*

*"A statement that is quantifiable, that makes a claim as to the "specific or absolute characteristics of goods," may be an actionable statement of fact while a general, subjective claim about a good is non-actionable puffery"*

*"Puffery" is intended to be based on an expression of opinion not made as a representation of fact."*

Although, the statement used by the Respondent in its campaign describes a specific characteristic of a product. It is noted that the Complainant, in its complaint and rebuttal, did not provide any reasonable substantiation/grounds for challenging the claim. However, for general understanding of consumer, a definition of "Grip" is given below<sup>4</sup>:

*"Grip is defined as the coefficient of friction between the surface of the tyre and the surface of the racetrack. This friction depends on an array of factors including the roughness of the track as well as the type, temperature and therefore behaviour of the tyre rubber. These factors ultimately affect the deformability and viscosity of the tyre rubber which along with the tyre's hysteresis are key factors in the generation of grip".*

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<sup>4</sup> <https://racecar-engineering.telegraph.co.uk/tech-explained/tyre-grip/>

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*Grip is generated by 1) Indentation and 2) Molecular Adhesion. Both of these mechanisms depend on the rubber's hysteresis, deformability and viscosity. Indentation is where the roughness of the track excites the tyre rubber. While molecular adhesion is where interactions occur between the tyre rubber and the racetrack.*

5.32 Since the Complainant has not provided any grounds to challenge the veracity of claim, i.e., "Grip service jesi to fiker kesi", therefore the Enquiry Committee will not consider it as an allegation of the Complainant against the Respondent. Moreover, it is important to note that the instant complaint was lodged on January 13, 2023, after discontinuation of the alleged marketing campaign of the Respondent. In the complaint, it was alleged that the Respondent has been involved in the dissemination of false and misleading information to the consumers through adoption of claim, i.e., "service tyres 40% tak zaiada chaley" & "Grip Service jesi to fiker kesi". The Complainant submitted a URL link <https://www.youtube.com/watch?v=CMORUKgLJHY> through which false and misleading information was disseminated to the consumers.

5.33 In this regard, the Respondent submitted that the URL link provided by the Complainant is not from its website or social media page but belongs to "The Crew Films". The Crew Films is an entity that had made this electronic advertisement along with other advertisements that it has created and placed the same on its business page to advertise its own business. The Respondent clarified that the advertisement in question has not been placed at the "The Crew Films" page at the Respondent's request. However, upon request of the Respondent vide email dated 08-03-2023, "The Crew Films" removed the alleged advertisement from its page. It is pertinent to mention here that the video link provided by the Complainant i.e. <https://www.youtube.com/watch?v=CMORUKgLJHY> is also no more available on the YouTube. The Screenshot of the URL is provided below:



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- 5.34 The Complainant has also submitted copies of abrasion tests conducted by SGS on December 05, 2022, and Bureau Veritas dated January 03, 2023, which illustrate the current position of Complainant's as well as Respondent's products. As per SGS report, average volume loss of the Respondent's Products is more than the Complainant's products. Hence, the Respondent's products are no longer better than the Complainant's. Abrasion tests results of both the laboratories are reproduced in Paras 2.12 & 2.13 above. However, the abrasion test results, submitted by the Complainant, illustrate the position of both products on December 05, 2022, whereas, the Respondent had discontinued its alleged campaign prior to this abrasion tests report. Therefore, the current abrasion tests can't be applied on the past performance, marketing and position of both the products.
- 5.35 In light of the submission made by the Respondent and subsequent discussion made above, it can be concluded that the Respondent had prior reasonable substantiation of making claims, i.e., "Service Tyre Chaley 40% tak Zayada"& "Grip Service jesi to fiker kesi" made in the past advertisement campaign. Therefore, the Respondent has not disseminated false and/or misleading information to the consumers.
- 5.36 In addition to the above, the Complainant also alleged that the Respondent has created a false impression to the extent of the technology that is being used by them for their tyres, i.e., "German Technology". According to the Complainant, no company in Pakistan possesses the infrastructure or expertise for the same, and the Respondent is involved in grave fabrication only to dupe the general public into purchasing their products.
- 5.37 The Respondent in its defense submitted that the process of manufacturing of its motorcycle tyres is done through specialized imported machines. The Mother Equipment used by the Respondent for manufacturing of tyres (including motorcycle tyres) are imported from Germany and Italy. It currently uses four machines, namely F-160 (procured in 2005), BM 305N (procured in 2014), BM 440N (procured in 2017) and BM 440N (procured in 2023).
- 5.38 Mixing of rubber compounds is a first and integral part of tyre manufacturing process. The Respondent is using mixing machines manufactured by HF Mixing Group<sup>5</sup>, Germany since 2005. In addition, the Respondent has also acquired NST Rotor from Germany in 2017 from the same Group. The Respondent shared with us a copy machinery import documents showing the machinery import from HF Mixing Group, Germany. It has been observed that HF Mixing Group provides specialized machinery for tyre manufacturers for the technical rubber goods industry and for the special applications sector.

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<sup>5</sup> <https://www.hf-mixinggroup.com/en/group/our-expertise/>

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- 5.39 Now, in order to establish whether, the procurement of machinery from Germany constitutes the use of term German Technology? Let's first describe the terms technology and equipment.

**Technology:**

*"Technology is.... Information application to design, production and utilization of services and goods and organizing human activities.<sup>6</sup>"*

**Equipment:**

*Tools, be they devices, machines, or vehicles. Assist a person in achieving an action beyond the normal capabilities of a human. Tangible property that is not land or buildings, but facilitates business operations<sup>7</sup>.*

- 5.40 So, from the above, it is clear that equipment is a device or a machine that is made to get a desired output whereas technology entails scientific knowledge, techniques, production protocols and processes with which a product is manufactured. The machines manufactured in Germany are programmed in German technology, entailing protocols and processes with which products are manufactured. The procurement of German tyre manufacturing machines allows the Respondent to produce a product in line with "German Technology", as equipment embodies technology Therefore, the statement is neither false nor a misleading statement.
- 5.41 Therefore, when the overall net general impression of the marketing campaign of the Respondent is taken into account and considered along with the submissions made and discussed above, it appears that the claims made in the advertisement are not false nor misleading in nature. Also, these do not lack a reasonable basis. Therefore, the case of, *prima facie*, deceptive marketing practices in terms of Section 10(1) in general and particular Section 10(2)(a), (b) & (c) of the Act, has not been made out.

**WHETHER THERE IS A SPILLOVER EFFECT OF THE CONDUCT OF THE RESPONDENT:**

- 5.42 As regards the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, it is highlighted that the claims have been marketed through electronic media, social media as well as outdoor advertisements across Pakistan.

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<sup>6</sup><https://thelawdictionary.org/technology/#:~:text=TECHNOLOGY%20Definition%20%26%20Legal%20Meaning&text=Information%20application%20to%20design%2C%20production,goods%20and%20organizing%20human%20activities.>

<sup>7</sup><https://thelawdictionary.org/equipment/#:~:text=EQUIPMENT%20Definition%20%26%20Legal%20Meaning&text=Tools%2C%20be%20they%20devices%2C%20machines,bldings%2C%20but%20facilitates%20business%20operations.>

- 5.43 The social media platforms, electronic advertisement and outdoor advertisement campaign run by the Respondent has a national outreach and significant viewership. Hence, the scope of the advertisements was not restricted to a particular area or province. In view of the above, it can be established that the effect of anticompetitive behavior is spilling over the territorial limits of provinces.

**FACTS PERTAINING TO PRELIMINARY OBJECTION OF THE RESPONDENT:**

- 5.44 The Respondent raised some preliminary objections and submitted that the complaint under consideration has been filed to arm twist, blackmail and counter the complaint No. 455/2022 titled "Service Industries Limited vs. Panther Tyres Limited" filed by the Respondent against the Complainant.
- 5.45 In this regard, the Respondent, through email dated 26.08.2022, has submitted that it specifically asked the Complainant to stop dissemination of slogans "Pakistan No. 1 Tyres" and "Pioneer in Tyre Manufacturing" used by the Complainant in its marketing campaign. However, the request was turned down and the Respondent was threatened with initiation of legal actions. Copy of email dated 26.08.2022 is attached and marked as **Annex-D**.
- 5.46 The Respondent further submitted that as consequence, the Respondent filed a complaint with the Commission under complaint No. 1324/2022 on 22.09.2022. In response thereto and to exert unwarranted pressure on Respondent, the Complainant filed its complaint in Jan-Feb, 2023, after approximately four months of the said exchange and a few months after complaint No. 1324/2022 was filed by the Respondent.
- 5.47 In response to the preliminary objections raised by the Respondent, the Complainant submitted that it has filed a complaint against the Respondent on account of being involved in dissemination of false and misleading information to the consumers through the adoption of various marketing strategies that revolve around absolute and exaggerated claims regarding their Product's quality, characteristics and properties.
- 5.48 In this regard, the Enquiry Committee inquired as to when the Complainant learned about the deceptive marketing practices of the Respondent. The Complainant, vide email dated September 18, 2023, submitted that the Complainant initially came to learn about Respondent's impugned deceptive marketing practices in 2020 and subsequently approached the Respondent to inquire regarding the veracity of their claims. Meanwhile, the Respondent suspended/abandoned the subject marketing campaign altogether and it remained inactive until 2022.
- 5.49 The Enquiry Committee, once again, inquired as to when the Respondent suspended/abandoned its alleged marketing campaign. The Respondent, vide email dated September 20, 2023, submitted that the said marketing campaign was




suspended/abandoned in September 2022. The Enquiry Committee further inquired as to when the Complainant approached the Respondent and inquired regarding the veracity of alleged marketing campaign. In this regard, the Respondent submitted that the Complainant never approached it and inquired about the campaign. In fact, the Respondent approached the Complainant through email dated 26-08-2022, and requested the Complainant to stop dissemination of slogans "Pakistan's No. 1 Tyre" and "Pioneer in Tyre Manufacturing" used by the Complainant. The same was turned down by the Complainant.


- 5.50 In light of the above, it can be established that the Complainant was aware of the marketing campaign of the Respondent in 2020. However, it did not approach any legal forum to stop it at the outset. In fact, the Complainant lodged its complaint after discontinuation of the alleged marketing campaign, and submitted that such actions predominantly, if not stopped at the very outset, would put the Complainant at an unfair advantage. However, the Complainant did not take any steps to stop such marketing campaign prior to its discontinuation in September 2022. Based on the evidence on record and submission made by both parties during course of enquiry, it can be established that the complaint is frivolous and/or vexatious, therefore liable to be dismissed on this ground alone.

## **6. CONCLUSIONS AND RECOMMENDATIONS:**

- 6.1 Based on the information available on record and the submissions made during the enquiry through correspondence before us, we the undersigned enquiry officers have reached the following conclusions:
- a) The Respondent initiated its marketing campaign in April 2019. Prior to initiation of the marketing campaign, the Respondent had already obtained abrasion test results from SGS Laboratory and from its own Laboratory in 2018.
  - b) As per laboratory results, the Product of the Respondent was far better than the competitor's products in terms of durability and longevity.
  - c) The Respondent acquired manufacturing machinery from a well renowned German Group namely HF Mixing Group, Germany.
  - d) The Respondent has had prior reasonable basis of making claims "Service Tyres chaley 40% tak Zayada", "Grip Service jesi to fiker kesi" and "German Technology".
  - e) The Respondent stopped its marketing campaign in September 2022, when it came to know that their competitors have also improved the quality of their products and its claims were no longer valid in light of abrasion test results.
  - f) Therefore, the Respondent adopted a self-compliance approach by discontinuing its marketing campaign in September 2022.
  - g) The Complainant was aware of the alleged marketing campaign of the Respondent since 2020. However, the Complainant did not challenge it at any legal forum to stop it at the very outset.

- h) The Complainant did not test its products from any independent laboratory during the marketing campaign of the Respondent to challenge the statements/claims of the Respondent.
- i) The Complainant filed its complaint after four (04) months of discontinuation of the alleged marketing campaign of the Respondent.
- j) The instant complaint is frivolous and vexatious.
- 6.2 In view of the above, it can be concluded that the Complainant has filed a frivolous and vexatious complaint against the Respondent and, therefore, be dismissed on this ground alone.
- 6.3 Moreover, in light of the above findings, it is concluded that the Respondent had prior reasonable substantiation to make claims, i.e., "Service Tyre Chaley 40% Tak Zaiyada", "Grip Service *jesi to Fiker Kesi*" and "German Technology". Therefore, a case of deceptive marketing practices under Section 10 of the Act against the Respondent is not made out.
- 6.4 In the above mentioned context, it is recommended that the complaint filed by M/s Panther Tyres Limited against M/s Service Industries Limited may be disposed of in accordance with the law.

  
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(Enquiry Officer)

  
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Assistant Director (OFT)  
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