



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO M/S GREEN FIELD
DEVELOPERS (PRIVATE) LIMITED FOR DECEPTIVE MARKETING PRACTICES**

(FILE No. 190/OFT/GREENCITY /CCP/2015)

Date of Hearing

14-03-2017
18-01-2017
16-08-2016
21-12-2017

Adjudicating Members

Ms. Vadiyya S. Khalil
Chairperson

Dr. Shahzad Ansar
Member

On behalf of Green Field Developers (Pvt.) Limited

Barrister Shoaib Razzaq
Barrister Jawad Khalid Niazi
Raja Soban Hayat, Advocate
Ms. Fatima Butt, Advocate



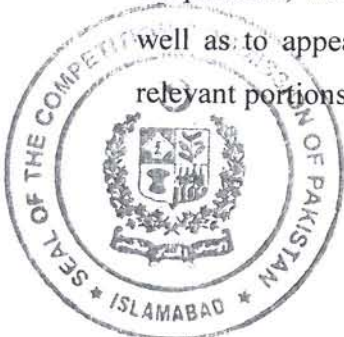
Handwritten signature and initials.

ORDER

1. This order shall dispose of the proceedings initiated pursuant to Show Cause Notice No.21/2016 dated 13 June 2016 (the 'SCN'), issued to M/s Green Field Developers (Pvt.) Limited (hereinafter the '**Respondent**') for *prima facie* violations of Section 10 of the Competition Act, 2010 (the '**Act**'). The SCN was issued pursuant to an Enquiry Report dated 11 June 2016 (the "**Enquiry Report**") initiated by the Competition Commission of Pakistan (the '**Commission**') in the exercise of its *suo motu* powers under Section 37(1) of the Act.
2. The main issue under consideration in this matter is whether the Respondent's marketing claims as contained in its advertisements for its housing project "Green City Islamabad" ('**GCI Project**') amount to deceptive marketing practices through the distribution of false or misleading information to consumers and/or capable of harming the business interests of competitors, within the meaning and scope of Section 10(1) read with Section 10(2)(a) and 10(2)(b) of the Act.

FACTUAL BACKGROUND

3. The Respondent is a private limited company incorporated in Pakistan and is engaged in the development and marketing of a residential housing society. The Commission took notice of advertisements published by the Respondent in print media and billboards at the time of, and after, the launch of GCI Project located in Fateh Jang, a city in Attock District, Punjab province of Pakistan, wherein certain marketing claims regarding (i) the legal status of the GCI Project, (ii) its location, and (iii) its affiliation with various Government, had been made (hereinafter the "Marketing Claims").
4. Based on the *prima facie* findings of the Enquiry Report, the SCN was issued to the Respondent, wherein it was required to respond in writing within fourteen (14) days as well as to appear before the Commission to avail its opportunity of being heard. The relevant portions of the SCN are reproduced below:



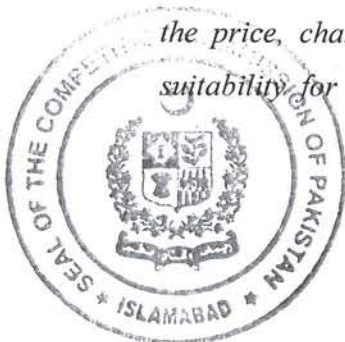
HA VSR

4. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 4.1 to 4.14 in particular, the Undertaking launched a housing scheme by the name of 'Green City' in Fateh Jhang after obtaining NOC of Fateh Jhang TMA, and marketed the same as 'Green City Islamabad' through its website, brochures and advertisements thereby claiming that the scheme is in Islamabad (Claim A);

5. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 4.1 to 4.14 in particular, the Undertaking has claimed affiliations with various governmental departments and bodies through the display of logos on its website and brochures (Claim B);

6. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 4.15, Claims A and B made by the Undertaking appear to be unsubstantiated and thus prima facie constitute, individually and/or collectively, the distribution of false and misleading information that is capable of harming the business interests of another undertaking, within the meaning and scope of Section 10(2) (a) of the Act, in violation of Section 10(1) of the Act;

7. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 4.16 and 4.17, Claims A and B made by the Undertaking appear to be unsubstantiated and thus prima facie constitute, individually and/or collectively, the distribution of false and 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 within the meaning and



HA VSC

scope of Section 10(2)(b) of the Act, in violation of Section 10(1) of the Act;

SUBMISSIONS BY THE RESPONDENT

5. In response to the SCN, the Respondent filed its reply dated 13-06-2016 with the Commission, wherein it denied the allegations leveled against it and claimed that its Marketing Claims as contained in the advertisements of the GCI Project did not amount to deceptive marketing practices under Section 10 of the Act. The Respondent made the following submissions:
- a. That due to oversight and misunderstanding on its part, a handful of brochures were printed regarding GCI Project, the distribution of which has however been stopped forthwith.
 - b. That the allegations against the Respondent are out of context and taken in isolation, especially in the absence of any complaint having been filed with the Commission;
 - c. That the Commission in taking *suo motu* action against the Respondent has exceeded its mandate and power and has acted *ultra vires* of the Act and the Constitution of the Islamic Republic of Pakistan 1973;
 - d. That the Commission failed to provide evidence that the Undertaking's conduct affected the actions and behaviour of consumers as well as the business interests of other entities, hence proving that the *suo motu* action by the Commission was not for the interest of public at large;
 - e. That GCI Project advertisements are not persuasive in nature and are capable of harming the business interests of other entities. The word 'Islamabad' was isolated and the fact that consumers were capable of visiting the respective site before investing therein was completely negated and ignored by the Commission;



HA 182

- f. That the Commission has failed to take any action against other housing scheme developers who have also used the term 'Islamabad' in their marketing campaigns, *for instance*, Wapda Town Islamabad, Airline Avenue Islamabad, and Airport Enclave Islamabad. The Commission has singled out the Respondent in particular and closed their eyes on other developers;
- g. That the Respondent has requested for the Commission to take a lenient approach in this matter as any misrepresentation by it was neither willful nor planned and that the SCN may be set aside.
- h. That the Respondent is ready to alter their advertisement following consultation with the Commission for any potential non-compliance of the Act.
6. The Commission conducted hearings in the matter on 14-03-2017, 18-01-2017, 16-08-2016 and 21-12-2017. During the hearing the Counsel for the Respondent assured the Commission of complying with any direction passed by it and requested for a lenient view. The Respondents also filed the Commitments with the Commission in accordance with the Chapter IV of the Competition Commission (General Enforcement) Regulations, 2007.

POINTS FOR DETERMINATION

7. In the light of the Enquiry Report, the SCN and the submissions made by the Respondent, the substantive issues identified by the Commission are as follows:
- A. Whether the Respondent is disseminating false/ misleading information to consumers, that is lacking a reasonable basis, related to character, properties, suitability or quality of GCI Project in violation of Section 10(2)(b) of the Act?*
- B. Whether the conduct of the Respondent is capable of harming the business interest of other undertakings, including its competitors, in violation of Section 10(2)(a) of the Act?*



HA VSZ

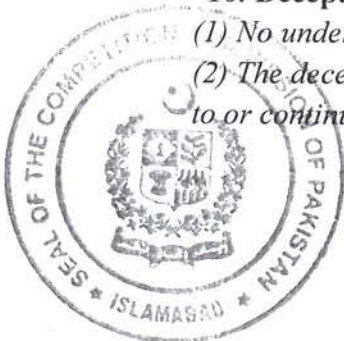
ANALYSIS AND DECISION

8. The factual and legal analysis herein below shall be structured according to the sequence and order of the two pertinent issues demarcated above as Issue A and Issue B. To this extent the Commission has taken into account and perused the record before it, including the Respondent's submissions and supporting documents.
9. Before proceeding with such analysis and a consequent determination as to any contravention of the Act in fact and in law, we find it necessary to briefly address the legal objection put forth by the Respondent regarding the *suo motu* inquiry powers of the Commission.
10. It is clarified that the enquiry itself was initiated pursuant to Section 37(1) of the Act, according to which the Commission is empowered to conduct enquiries "*on its own*" into matters relevant to the purposes of the Act. The existence of a complaint by an undertaking is not a precondition for invoking this provision of the Act. The Commission upon taking notice of GCI Project advertisement and conducting an initial probe into the matter was satisfied that a thorough investigation was required in view of the apparent misleading characteristics of the advertisement and in the interest of public and consumers.
11. Furthermore, the Commission is empowered to initiate proceedings under Section 30 of the Act in relation to *prima facie* violations of the substantive provisions of the Act, which in the present instance pertains to deceptive marketing practices prohibited under Section 10 of the Act. Such proceedings may be initiated against any undertaking(s) regardless of which industry or sector it operates in, as long as it is engaged, directly or indirectly, in the production and supply of goods or provision of services on a given market in Pakistan.
12. Before proceeding further, Section 10 of the Act is reproduced for ease of reference:

"10. Deceptive Marketing Practices

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

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



JA V&S

- (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 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's labelling or packaging."

ISSUE A:

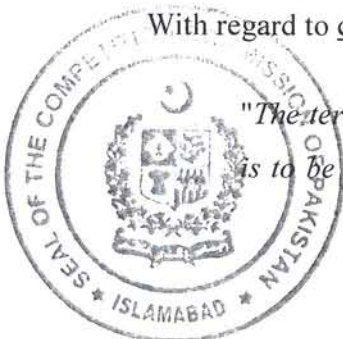
13. In order to address the first issue relating to Section 10(2)(b) of the Act, the Respondent's GCI Project advertisement and Marketing Claims therein will be evaluated in terms of whether the information provided to consumers is false or misleading in any way, including whether it is lacking a reasonable basis relating to character, properties, suitability, or quality of GCI Project.
14. It is relevant here to reproduce excerpts from previous findings and observations of the Commission pertaining to the interpretation of the primary elements of deception as foreseen by Section 10 of the Act:

"In its Order dated 29 September 2008, in the matter of ***China Mobile Pak Limited and M/s Pakistan Telecom Mobile Limited***, reported as **2010 CLD 1478** the Commission laid down its approach in determining whether an advertisement amounts to deceptive marketing as follows:

"The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context."

With regard to consumers, the Commission held that:

"The term 'consumer' under Section 10 of the [Ordinance] is to be construed as an 'ordinary consumer' but need not



Handwritten initials and signature.

necessarily be restricted to the end consumer of the goods or services."

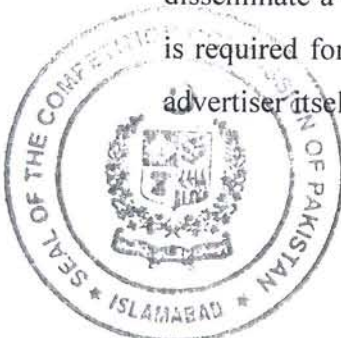
False and misleading information has been interpreted by the Commission as follows:

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

While,

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 erroneous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent".*

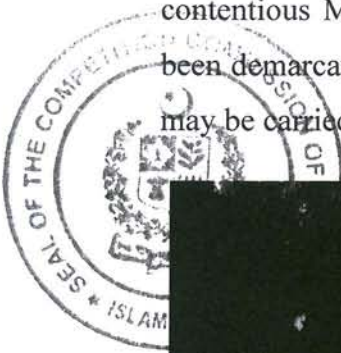
15. The Commission in the matter of *China Mobile Pak Limited and M/s Pakistan Telecom Mobile Limited*, reported as 2010 CLD 1478, which has subsequently been relied upon in the later decisions, examines the *net general impression* of advertisements. The analysis includes both express and implied claims. Furthermore, neither proof of intent to disseminate a deceptive claim nor evidence that the consumers have actually been misled is required for a violation under Section 10(2)(b) of the Act to be made out. Hence, the advertiser itself is responsible for any such claims made.



Handwritten signature/initials.

16. The nexus between the real estate market and deceptive marketing practices therein is significant. The business undertakings involved in the business, along with real estate agents, commercial land and private housing scheme developers, property managers, auctioneers must not mislead the consumer, or potential investor, irrespective of whether there was an intent to deceive or not. Special care must be taken to ensure no false or misleading statement has been made, whether it is an express, implied, absolute, or qualified claim relating to information being disseminated *such as* governmental approvals and No Objection Certificates (NOCs), nature, characteristics and use to which the land may lawfully be put, existence of associated facilities and amenities, price and additional charges, as well as the location of the land itself.

17. Below is a reproduction of the image of GCI Project advertisement, wherein two contentious Marketing Claims being considered by the Commission in this Order, have been demarcated so that a detailed factual examination and legal analysis of each of them may be carried out:



Claim I

HA VS



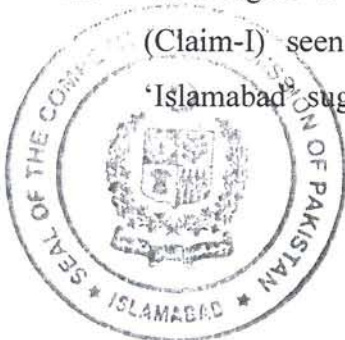
Claim I: Representation of location and proximity of GCI Project

18. With regard to marketing claims made in the process of advertising, the onus is upon the undertakings to ensure that such claims have a reasonable basis or prior substantiation. In its Order dated 23 February 2010 in the matter of **M/s Procter and Gamble Pakistan (Private) Limited reported as 2010 CLD 1695**, the Commission has observed that:

“the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement”.

19. The ‘reasonable basis’ doctrine takes inspiration from US jurisprudence on the subject (**Pfizer, Inc., 81 F.T.C. 23 (1972)**) according to which advertisers must possess recognizable level of substantiation or proof of all express and/or implied claims contained in the advertisement viz., what claims does the advertisement convey to ordinary consumers. Thus, if reasonable basis does not exist, the marketing claim in question is false and/ or misleading.

20. With regard to the issue of the marketing claim relating to the location of GCI Project (Claim-I) seen in the image above, the Respondent's advertisement uses the word ‘Islamabad’ suggesting and giving the consumers the impression that the housing scheme

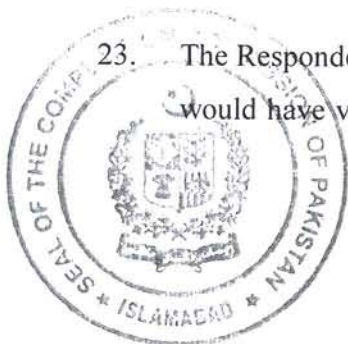


Handwritten signature and initials, including 'VSB' and 'JA'.

is located in Islamabad and that it holds some form of approval from Capital Development Authority (CDA) of Islamabad. On the contrary, GCI Project is situated in Tehsil Fateh Jang, District Attock, and not the Islamabad Capital Territory. Also, the Respondent only has been approved by Tehsil Municipal Authority (TMA), Fateh Jang.

21. As noted above, the Respondent has contended that GCI Project is located in front of the New Islamabad International Airport in Fateh Jang and is linked to the Kashmir Highway, therefore, housing scheme is also located 'within the domain of Islamabad International Airport'. The Respondent has attempted to create an impression that since the airport is called the New Islamabad Airport.
22. In many parts of the world, airports are made at a distance outside of cities for, *inter alia*, operational and environmental factors and, therefore, do not always fall within the territorial limits of the city they are named after. For instance, London Luton Airport is located in the Borough of Luton in Bedfordshire England, far away from London. Berlin Schönefeld Airport and the New Berlin Brandenburg Airport are both located in the Town of Schonefeld in the German state of Brandenburg much outside the city's borders. In Pakistan, Benazir Bhutto International Airport formerly known as the Islamabad International Airport is not located in the capital city, but in Rawalpindi. The New Islamabad International Airport, though yet to be formally named, is also located outside of Islamabad in Tehsil Fateh Jang. Using proximity to the new airport as a basis for claiming that the Respondent's housing project is in Islamabad is, therefore, profoundly unreasonable, baseless and misleading. On the contrary, what the Respondent's advertisement is actually communicating to consumers is that GCI Project is located in Islamabad. Placing reliance on the name of an airport is not a reasonable basis for making such claims with regards to the location of objects or places in its proximity. Therefore, the Commission is of the considered opinion that the Respondent's marking claim is both false and misleading in substance and is likely to influence a consumer's purchasing behaviour, in the circumstances.

23. The Respondent has further argued that the advertisements are not deceptive as consumers would have visited the site prior to making a decision thereby learning the true nature of



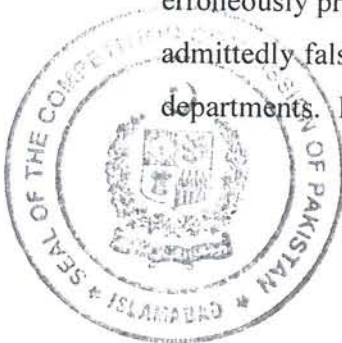
JA VSC

the location before purchasing land. This argument is simply not tenable because deception does not take place only when a consumer actually buys or purchases a product, but it could occur when false or misleading marketing material has the potential to influence a consumer to consider the product in question. It is clear that the first contact between the Respondent and the public at large/consumers in all eventuality is likely to be at the time GCI Project advertisement was seen/read on billboards, print media and on its website, wherein it was stated in absolute terms that the housing scheme is being developed in Islamabad.

24. It must also be pointed out that using the term 'Islamabad' with "Green City" also suggests that the Respondent has some form of permission from CDA. This is certainly not the case. The Respondent does not have any approval or permission from CDA, but an NOC issued by Tehsil Municipal Authority, Fateh Jang. As such the impression being created by the use of the term 'Islamabad' is one that can mislead consumers and is likely to affect consumer's purchasing decisions.
25. The Commission, therefore, holds that the use of 'Islamabad' in conjunction with "Green City" by the Respondent for the advertisement of GCI Project, directly or indirectly, amounts to the dissemination of false and misleading information to consumers in terms of Section 10(2)(b) of the Act in violation of Section 10(1) of the Act.

Claim II: Mentioning of affiliations with various Government departments/organizations

26. We now move on to the second claim made by the Respondent in their advertisement *i.e.* that GCI Project has approvals from various governmental bodies (Claim-II). The ones specifically mentioned on their billboards and website include Government of Pakistan, SECP, CAA, and EPD, etc.
27. The Respondents have stated that the logos of these governmental bodies were erroneously printed only on pamphlets and that this has been discontinued. This practice is admittedly false and misleading as no approvals and certifications exist from these public departments. It appears from the record that this practice was not restricted just to



Handwritten signature/initials

pamphlets but that these logos were also present on billboards and the Respondent's website etc.

28. The Commission, therefore, finds that the Respondent, by using various logos of public sector departments and organizations on various marketing media for the GCI Project, disseminated false and misleading information to consumers in terms of Section 10(2)(b) of the Act in violation of Section 10(1) of the Act.

ISSUE B

29. With respect to this issue, the Commission is required to determine whether the Respondent's marketing claims (Claim I & II as highlighted in GCI Project advertisement above) falls within the scope of Section 10(2)(a) of the Act.

30. Section 10(2)(a) of the Act provides that *'the distribution of false or misleading information that it is capable of harming the business interests of another undertaking'* shall be deemed to constitute a deceptive marketing practice.

31. The term "business interest" has not been defined either in the Act or discussed exhaustively in the Commission's previous orders. However, *in the Matter of Show Cause Notice issued to M/s Jotun Paints For Deceptive Marketing Practices*¹ the Commission included image, goodwill, and sales as concepts of business interest. *In the Matter Of Show Cause Notice issued to M/S Tara Crop Sciences (Private) Limited*², the Commission added protection of brands in the concept of business interest. Section 10(2)(a) of the Act explicitly seeks to protect the business interest of undertakings/ competing entities from being harmed by deceptive marketing practices of another undertaking. By disseminating false and misleading information, any business undertaking, whether dominant or not, can adversely affect the sales, goodwill, image, and brands of another undertaking either by unduly influencing consumers away from its competitors or attracting them towards itself. For a market to be truly competitive,

¹ Available at http://cc.gov.pk/images/Downloads/jotun_pakistan.pdf

² Available at http://www.cc.gov.pk/images/Downloads/show_cause%20notice_issued_to_ms_tara_crop_order.pdf



[Handwritten signature]

consumers must have accurate and timely information to make informed choices and decisions. Deception takes away this crucial element of competition in addition to the transactional choice of consumers.

32. The Commission has consistently held over several years of decision making, that false and misleading information disseminated by an undertaking to consumers will always be capable of harming the business interest of the former's competitors. Even a one-time decision of consumer due to the provision of false and/ or misleading information infringes on the interests of competitors in the market. This effect is even more marked in markets *such as* real estate where there are high switching costs due to prices, governmental taxes and other regulations. Turnover times for real estate products are especially long for end consumers who generally lock-in considerable financial resources to buy the estate. Turnover times are even longer for new developments as it takes time for re-sale markets to develop. Therefore, both consumers, as well as competitors, stand to be greatly harmed in case decisions are initiated by or based on false and/ or misleading information.
33. The Commission, therefore, holds that the distribution of false and/ or misleading information to consumers by the Respondent as discussed above, is in fact capable of harming the business interests of its competitors in terms of Section 10(2)(a), in violation of Section 10(1) of the Act.

COMMITMENTS

34. The Respondent submitted an undertaking questionably dated "04-10-2017" (carrying a stamp paper issuance date of "31-3-17") for the consideration of the Commission in April 2017. According to the said undertaking, the Respondent stated that it had *"already removed various unauthorized affiliations displays of logos and websites from brochures and they are willing to remove any other unauthorized logos as per the direction of the Commission"*. The Respondent further undertook *"that they are not marketing their housing society as Green City Islamabad"* and committed *"that in the future will not market their housing society as Green City Islamabad"*. Furthermore, the undertaking



Handwritten signature/initials

included a willingness to withdraw the Writ Petition No. 2067/2016 which the Respondent had filed before the Islamabad High Court against the Commission challenging the legality and jurisdiction of the SCN. Lastly the Respondent submitted that it was “willing to implement all directions/ Order of the Commission in order to resolve this issue amicably”.

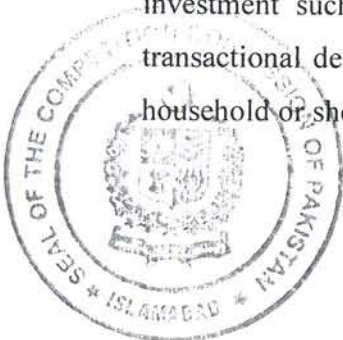
35. However, the Commission was of the considered view that the undertaking submitted by the Respondent was insufficient as it did not meaningfully remedy the prima facie violations laid out in the SCN and as such could not be considered to be a commitment filed with the meaning and scope of the Competition Commission (General) Enforcement Regulations, 2007. The Commission further observed that the unauthorized governmental body affiliation logos continue to be used by the Respondent on its website up to at least 9 October 2017 and that the word “Islamabad” had not been removed from the Respondent’s logo “Green City Islamabad”. Furthermore, the new advertisement copy “Advertisement Supplement”, provided to the Commission continued to make reference to the Respondent as “Green City Islamabad” even though the undertaking itself stated that the Respondent had ceased to use this name.

36. The Respondent was thereafter informed of the inadequacies contained in the aforementioned undertaking in terms of its failure to appropriately address and remedy the competition related concerns relating to the GCI Project advertisement. A further undertaking dated 27 October 2017 was received by the Commission on 30 October 2017. A perusal of the copies of the new advertisements of the GLI Scheme in the daily newspapers published on 22 October 2017 and provided to the Commission, demonstrates that the words “Approved by TMA Fateh Jang” have been added after the name of the scheme “Green City”. The Commission finds itself satisfied with the contents of this undertaking dated 27 October 2017 in terms of having effectively addressed the primary inadequacies contained in the previous undertaking submitted by the Respondent.



REMEDY AND PENALTY

37. In recent times, the Commission has become vary of the prevalent practice of deceptive marketing and misleading advertisement specifically in the real estate industry and how such conduct is perceived by consumers in terms of their transactional decision to their own financial detriment. Real estate developers are increasingly leading potential investors to a wrong conclusion or false impression, through the use of ambiguous information in their advertising campaigns without being able to back their claim with evidence. Such conduct with almost always be culpable under Section 10 of the Act. Therefore, we cannot stress enough, the higher burden placed on undertakings which operate in the real estate market, in relation to the accuracy of any claims or representations that they make in the course of their marketing campaigns. Special care must be taken not to make a false or misleading statement, whether express or implied claim, absolute or qualified, in the electronic or print media or otherwise, relating to pertinent information such as government approvals and no-objection certificates (NOCs), nature, characteristics and use to which the land may lawfully be put, existence of associated facilities and amenities, price and additional charges, as well as the location of the land itself.
38. The importance of responsible and accurate advertising in relation to real estate should not, in any circumstance, be undermined. The real estate market plays a very vital role in the development of any country's economy as a number of other associated sectors have close links with this sector. At the same time, the degree of regulation remains inadequate to the extent that bogus housing schemes and deceptive marketing practices continue to harm growth in this sector, ultimately causing a loss to the overall sustainability of Pakistan's economy. The Commission, at the outset, also bears in mind the specific circumstances of consumers that often fall victim to misleading claims in relation to real estate investments they may make. For the majority of the population in this country, it almost takes a lifetime of savings or obtaining credit or loans from banks to make an investment such as the acquisition of a plot to secure a more stable future. Such a transactional decision is a much more complicated and difficult one as against buying a household or shelved product from a supermarket. Therefore, we cannot stress enough, the



Handwritten signature

higher burden placed on undertakings which operate in the real estate market, in relation to the accuracy of any claims or representations that they make in the course of their marketing campaigns.

39. Keeping in view the above, the Commission is of the considered view that the contravention of Section 10(1) of the Act stands established in terms of what has already been discussed above. At the same time, the Commission accepts the commitments of the Respondent as contained in its undertaking dated 27 October 2017 in view of the willingness of the Respondent to act in accordance with the directions of the Commission and the provision of the Act. Nonetheless, in the given facts and circumstances and in pursuance of Regulation 37 of the Competition Commission (General Enforcement) Regulations, 2007 read with Section 38 of the Act, the Commission is constrained to impose a penalty in the sum of PKR 2,500,000 (Rupees Two Million and Five Hundred Thousand Only) on the Undertaking.
40. The Commission further directs the Respondent to ensure that it does not make use of the word "Islamabad" as part of the name of its housing scheme and that the unauthorized affiliation logos are not displayed on its website or any promotional material in the future. The Respondent is also directed to refrain from indulging in any form of deceptive marketing practices in the future and is forewarned that repeat violations may attract stricter penalties as per the law. Further, the penalty so imposed on the Respondent shall be deposited with the Registrar of the Commission within thirty (30) days from the date of this Order.
41. In terms of the above, SCN No.21/2016 is hereby disposed of.



Vadiyya Khalil
Chairperson



Dr. Shahzad Ansar
Member

Islamabad the 21st December, 2017

