



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

SHOW CAUSE NOTICES ISSUED TO  
**DRY & ACID-LEAD BATTERY MANUFACTURERS**

(F. NO: 201/COMP/BATTERY MANUFACTURERS/OFT/CCP/2016)

Date(s) of hearing: 17.10.2017  
13.03.2018

Commission: Dr. Shahzad Ansar  
**Member**

Dr. Muhammad Saleem  
**Member**

Present on behalf of:

Complainant: Mirza Muhammad Saeed

M/s Atlas Battery Ltd Mr. Mohsin Khan, GM Marketing  
Mr. Muhammad Iqal, GM Supply Chain

M/s Treet Corporation Ltd Syed Salman Zaheer, Advocate  
Regional Sales Manager, Battery  
Division

M/s Exide Pakistan Ltd Syed. Aminuddin Fakir, Advocate  
Syed Hasan Razan, Advocate  
Orr, Dignam & Co.

M/s Pakistan Accumulators (Pvt.) Limited Mr. Muhammad Rehan Akhtar, CFO  
Mr. Bilal Ahmed, AGM Tax & Corporate

M/s Millat Industries Products Ltd Mr. Naeem Raza  
Head of Marketing & Sales

M/s Century Engineering Industries Ltd Mr. Kashif Ahmed  
Zonal Sales Manager



## ORDER

1. This order shall dispose of the Show Cause Notices Nos. 12/2017, 13/2017, 14/207, 15/2017, 16/2017, 17/2017 issued to M/s Atlas Battery Limited (the 'ABL'), M/s Treat Corporation Limited (the 'TCL'), M/s Excide Pakistan Limited (the 'EPL'), M/s Pakistan Accumulators (Private) Limited (the 'PAPL'), M/s Millat Industrial Products Limited (the 'MIPL'), M/s Century Engineering Industries (Private) Limited (the 'CEIPL'), respectively for *prima facie* violation of Section 10 of the Competition Act, 2010 (the 'Act') which, *inter alia*, declares deceptive marketing practices unlawful.

## FACTUAL BACKGROUND

2. ABL, TCL, EPL, PAPL, MIPL, and CEIPL are Undertakings as defined in Section 2(1)(q) of the Act. The Undertakings are engaged in the business of manufacturing, distributing and selling batteries and other products to consumers across Pakistan. The Undertakings may be referred to as individually as "Respondent" and collectively as "Respondents" in this order.
3. The complainant, Mirza Muhammad Saeed, is an individual engaged in the business of operating a Compressed Natural Gas (the 'CNG') filling station under the name and style of Roshnee CNG near Kamoki Lahore and therefore is also an undertaking within the meanings of Section 2(1)(q) of the Act.
4. On 22 August 2016, Mr. Saeed lodged a complaint alleging that most of the manufacturers of dry and/or acid-lead batteries doing business in Pakistan are engaged in deceptive marketing practices by not disclosing certain information related to capacity and utilization on their products and/or warranty cards. The omission of this information is critical to consumers in order to choose, compare and make their purchasing decision.
5. Moreover, it was alleged that these companies were printing randomly generated serial/numbers on their battery body, packaging, and warranty cards, which gives the impression that these serial/numbers represent the battery capacity.
6. Based on the allegation leveled in the complaint and after conducting an initial probe the Office of Fair Trade (the 'OFT') of the Competition Commission of Pakistan (the 'Commission') initiated an enquiry under Section 37 (2) of the Act.

The Enquiry Committee appointed by the Commission submitted its Enquiry Report on 22.08.2017 (the 'Enquiry Report'), which concluded the above-named Undertakings are



engaged in marketing practices by omitting material information *such as* battery capacity from the marketing material, including battery body and packaging and also by printing randomly general serial/numbers which, *prima facie*, contravenes Section 10 of the Act.

8. Keeping in view the findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act and issued SCNs to Undertakings on 22.08.2017, which, *inter alia*, stated<sup>1</sup>

*WHEREAS, in terms of the Enquiry Report in general and paragraphs 50 to 60 in particular, it appears that by omitting material information such as display of battery capacity on marketing material including battery body, the consumers would be unable to compare and contrast the quality, suitability for use and price of the products which may constitute deception in terms of Section 10 of the Act.*

*WHEREAS, in terms of the Enquiry Report in general and paragraph 63, 64 and 81 in particular, it appears that the Undertaking is in prima facie violation of Section 10(1) read with Section 10(2)(b) of the Act, by omitting to disclose material information on its product or packaging or any other marketing material. Furthermore, such marketing practices are capable of harming business interests of the competing undertakings in violation of Section 10(1) read with Section 10(2)(a) of the Act.*

### **WRITTEN REPLY AND HEARINGS**

#### **ABL's Submissions**

9. In its reply to the SCN dated 31.08.2017, ABL submitted that the numbers/description written on its batteries is merely reflective of nomenclature of each battery and not amperes-hours or voltage depicting capacity of a battery. In order to eliminate any kind of misconception as to the serial/number printed on batteries and their capacity; it has taken certain initiatives *such as* educating consumers and writing numbers of battery plates on the battery containers and carton from July 2016. According to ABL's counsel, these consumer awareness initiatives/ campaigns were launched by using different advertising media including television and radio.

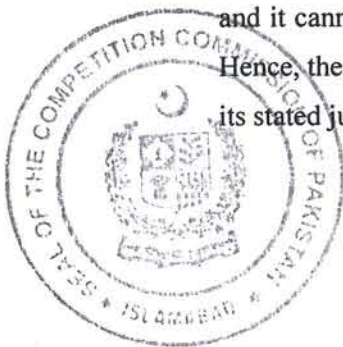


Paragraph reproduced have been taken from the SCN No. 12/2017 issued to ABL. To avoid the length of document SCNs issued to other Undertakings have not been reproduced, however, allegations levelled in the SCNs are substantially along with the same lines and shall be dealt with accordingly.

10. ABL further submitted that in collaboration with their joint venture partners, namely, M/s GS Yuasa International Limited, they are in the process of identifying Japanese Industrial Standard (JI Standard) of all batteries produced by them and based on those standard they intend to put battery Amperes-hours (Ah) (in addition to mentioning the number of battery plates) on battery containers, cartons, warranty cards and other publicity/promotional material and the whole exercise will be completed by July 2017. However, its exercise to validate capacity of its complete battery range is in progress and will be completed by September 15, 2017. Afterward, it will be able to disseminate information pertaining to battery Ah and Voltage (V) on battery containers, cartons, warranty cards and other publicity/promotional material from November 01, 2017. Finally, ABL submitted that this is an extension of the timeline to its earlier commitment to inform and educate the consumers about appropriate battery usage.

**TCL's Submissions**

11. In its reply to SCN dated 05.9.2017, TCL submitted that the assumption of jurisdiction and initiation of enquiry for the alleged violation of Section 10 of the Act and the issuance of the SCN by the Commission is illegal, without jurisdiction, and unconstitutional. Furthermore, the Act is beyond the legislative competence of the Majlis-e-Shoora (Parliament) of Pakistan. It was further submitted that its view is reinforced by the fact that each province in Pakistan has promulgated its own law for consumer protection by virtue of the delegation of powers under Article 142(c) of the Constitution of Pakistan, 1973 (the "Constitution").
12. TCL further stated that the Commission does not have judicial powers, even though the Act grants it judicial powers. The members of the Commission are appointed by the Federal Government and are not independent as required by Article 175(3) of the Constitution. This is in clear violation of Article 10-A of the Constitution which guarantees due process and fair trial and the Act violates the principle of separation of powers. Furthermore, the Act grants the Commission coercive powers to enter into private premises, impound private property, and initiate enquiries and to call for information under Sections 34, 35, 37 and 36 respectively. These sections grant excessive and arbitrary powers to the Commission and are unconstitutional. Utmost adherence to separation of powers between the legislature, executive, and the judiciary should be maintained. The Commission is a regulatory body and it cannot intervene in such matters without authorization by an independent tribunal. Hence, the Act is unconstitutional and the Commission is acting ultra vires with regards to its stated jurisdiction to prosecute, conduct proceedings and impose penalties. *HA*



13. TCL stated that these concerns have already been raised before Honourable High Courts of Pakistan and several cases are pending adjudication in which interim relief has been granted by suspending proceedings initiated by the Commission. Since the legitimacy of the Act and the existence of the Commission is a serious deliberation before the High Courts, no new enquiries or proceedings should be conducted by the Commission, until the time when the writ petitions are decided or at the minimum, the interim orders are vacated.
14. In addition, TCL stated that the instant complaint was filed by an individual in clear violation of Section 37(2) of the Act, which does not allow individual complaints. The complaints need to be initiated by an undertaking in terms of Section 2(1)(q) of the Act. The complainant is, therefore, not an undertaking. The counsel submitted that in the instant case, the Consumer Protection Act 2005, is applicable, which is a special law for consumer protection. Thus, the instant enquiry, the issuance of the Letters and SCN are in violation of the Act and the regulations.
15. TCL also stated that it has submitted photographs of the batteries which showed that TCL prints on its batteries all material information like Volts, AH and CCA as also acknowledged in paragraphs 21 to 25 of the enquiry report. Furthermore, paragraph 9 of the enquiry report admits that it is a general practice in the market that battery products are sold directly without any packaging. Thus, the enquiry report is self-contradictory, and all the allegations in the report should be rejected. TCL for these reasons is not engaging in any deceptive marketing practices to its customers and Section 10 of the Act is not violated. Therefore, SCN should be withdrawn and no further action should be taken by the Commission against TCL.

**EPL's Submissions**

16. In its reply dated 16.09.2017 to SCN, EPL submitted that the complainant has not approached the Commission with clean hands and the complaint is frivolous and vexatious. Secondly, the alleged violations identified in SCN are vague, unreasonable and unconstitutional. Thirdly, the Enquiry Report does not take into consideration the prevalent market practice and consumers' behaviour in Pakistan. Finally, EPL has not partaken in any false or misleading information in contravention of Section 10 of the Act.
17. EPL further stated that it does not print the capacity of its products *i.e.* batteries, their packaging or the warranty cards. However, it submitted that its products' capacity and other relevant information are provided on the company's website, which is accessible to the consumers at large. Therefore, EPL was not obligated to print the battery capacity on the



*[Handwritten signature]*

battery itself since a battery is a technical product which is targeted to a well-informed consumer in the market.

18. During the hearings, EPL further submitted that it is willing to file commitment with the Commission to print its batteries capacity in Ah on the body and packaging, given that it is granted a reasonable time period to do so. It was also submitted that EPL prints model numbers in compliance with the JI Standards namely, 'JIS D 5301: 2006-Lead-acid starter batteries, which are the applicable standard in Pakistan for automotive manufacturers. According to EPL, JI Standard is one of the basis on which demands are made by the customers and reflects suitability of the batteries. Moreover, JI Standards allows it to use its own nomenclature as regards to the model number. These numbers do not represent battery capacity nor can they be construed as its amperage. Finally, EPL stated that various guidelines and policy statements (of the United States and the United Kingdom) referred to in the Report are not applicable in Pakistan and cannot be binding on them. Therefore, EPL did not indulge in deceptive marketing practices as alleged against it under Section 10 of the Act.

**MIPL's Submissions**

19. In its reply to SCN dated 14.09.2017, MIPL submitted that it has been manufacturing and offering its products in the market since 2006/07. During that period, the practice of not indicating the battery capacity was an accepted norm in the market. Despite that MIPL started mentioning the battery capacity and the generic designation on the containers. MIPL enclosed some brochures of its products showing the battery's capacity and generic designation written on the container for reference purposes. However, MIPL stated that it was unable to sell these batteries and was 'forced' to conform to the market norm of not writing the capacity. Still, it continued mentioning the information on its printed brochures and official website. Moreover, MIPL is also showing the capacity on the containers of the newly developed line of Deep Cycle batteries and for reference, it provided a data sheet for the Commission's perusal.
20. Against this backdrop, MIPL asserted that despite lack of legal obligations and being forced to conform to market norms, it continued providing information of battery capacity to the best of its abilities. According to MIPL, the large companies which control the majority of the market are to be blamed for setting the trend of not mentioning battery capacity. In this regard, action should also be taken against M/s Force Batteries and Bridge Power, who have a larger market share than MIPL. As a recommendation, MIPL stated that a cut-off date should be established which would obligate companies to mention battery capacity. *TH*



## ISSUE(S)

Whether or not the omission of information pertaining to batteries capacity and utilization by the Respondents constitutes a violation of Section 10(2)(b) and Section 10(2)(a) read with Section 10(1) of the Act?

## DELIBERATIONS AND ANALYSIS

21. This is a deceptive marketing practices case which prohibits distribution of false or misleading information to consumers' detriment and competitive dynamics of the market. For reference, Section 10 of the Act is reproduced hereunder:

*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 of an Undertaking resorts to—*

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

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

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

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

22. Section 10 of the Act explicitly prohibits deceptive acts or practices which are false or misleading in material respects. Numerous Commission decisions have defined and elaborated on the phrase deceptive marketing practices. In its previous orders, *for instance, in the matters of M/s China Mobile Pak limited dated 29.09.2009 (Zong Order) and in the matter of M/s Proctor & Gamble Pakistan Private Limited dated 20.05.2017* for deceptive market practices. The Commission has discerned that for the application of the provisions of Section 10 of the Act there must be a representation, omission or practices that are likely to mislead consumers and influence their purchasing decisions. The concept of 'false information' and 'misleading information' as follows:



*“False information” can be said to include: oral or written statements or representations that are (a) contrary to the truth or false 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.*

Whereas, *“Misleading information” may include oral or written statements may include oral or written statement or representation that are: (a) capable of giving the wrong impression or idea, (b) likely to lead into error of conduct, though or judgement, (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.*

23. In view of the foregoing, all representations, omissions, or practices whether verbal or written, intentional or unintentional, that are not easily noticeable or easily understandable to consumers, but could impact their purchasing decision with regard to a product or service. If so, the representation, omission, or representation is “material” one. On the other hand, all representations, omissions, or practices, whether verbal or written, intentional or unintentional, that can give false impression or idea, or have the likelihood to induce consumers’ conduct, thought or judgement, or have the potential to misinform or misguide consumers due to vagueness, or omission, are materially misleading in an advertisement campaign, hence prohibited under Section 10 of the Act.
24. In regard to the concept of “consumers,” the Commission in its **Zong Order**, has held that for the purposes of application of Section 10, the consumer is to be taken as an “ordinary consumer.” The relevant parts of the order are reproduced hereunder:

*“[...] the term ‘consumer’ under Section 10 is to be construed an ‘ordinary consumer’ but not necessarily be restricted to the end consumers of the goods or services. The ordinary consumer is the usual, common or foreseeable user or buyer of the products. The ordinary consumer is not the same as the ‘ordinary prudent man’ concept evolved under the law of contract. Unlike the ordinary prudent man, the thrust on ordinary diligence, caution/ duty of care and ability to mitigate (possible inquiries)”*





on the part of the consumer would not be considered relevant factors. It must be borne in mind that one of the objectives of the [Act] is to protect consumers from anticompetitive practices; hence the [ultimate] beneficiary of the law is consumer”.

Therefore, in order to implement the law in its true letter and spirit, the scope of the term ‘consumer’ must be construed in most liberally and in its widest amplitude [...]. Restricting its interpretation with the use of the word ‘average,’ ‘reasonable,’ or ‘prudent,’ will not only narrow down and put constraints on the effective implementation of the provision, it would rather be contrary to the intent of the law. It would result in shifting the onus from the Undertakings to the consumers and is likely to result in providing for an easy exit for Undertakings from the application of Section 10 of the Act. Accordingly, the term ‘consumers’ under Section 10 of the Act is to be construed as an ‘ordinary consumer’ but not necessarily restricted to the end consumer of the goods or services.”

While referring to the judgment of **Standard Oil of Calif 84 FTC 1401**, the Commission has adhered to the concept of advertising representation and assessment thereof as follows:

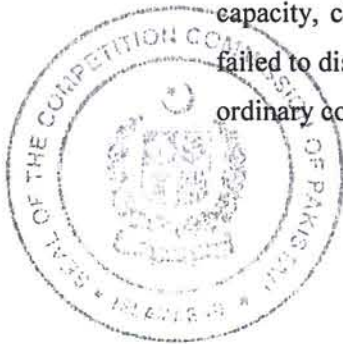
35. [i]n evaluating advertising representation, the [Commission] is required to look at the complete advertisement and formulate our opinion on the basis of general net impression conveyed by them and not on isolated scripts. As a rule, the above-stated view was upheld by the U.S. Court of Appeal in the matter of **Beneficiary Corp v FTC, 542 F. 2d 611 (3<sup>rd</sup> Cir., 1976)** in the following words ‘the tendency of the advertising to deceive [or mislead] must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from the context.

25. In view of the foregoing, the Commission observes target consumer class of the batteries in Pakistan is, by and large, general populous – a substantial majority of consumers where the product is sold and utilized. Therefore, the Commission is of the considered opinion that the concept of ‘ordinary consumer’ is applicable in the matter at hand. While evaluating the industry practice, the Commission will consider the totality of practice and net general impression in determining whether an ordinary consumer are likely to respond under the circumstances.




*AA*

26. In cases involving omission of material information, the disclosure of which is critical to prevent the marketing claim, practice or sale from being false or misleading, the sellers may omit such information in their verbal or written representations of from the commercial transactions.
27. Based on the review of the facts and law in light of the findings of the Enquiry Report, advertizing representation/omission/practices as well as submissions of the of Respondents, the Commission is finds it apparent that from the products packaging, labelling, warranty cards and media campaigns, an ordinary consumer could not make an informed choice/decision to purchase a battery suitable for its use whether as starter/lightening/ignition (batteries used in automotive applications, including car, trucks, buses, etc.) or uninterruptible power supply (UPS) products such as backup stationary batteries for home appliances, computers and telecommunication systems. It is simply because the Respondents are not providing, expressly or implicitly, any information pertaining to capacity and utility of the batteries in any form, the omission of such information and marketing is likely to mislead consumers while purchasing these products.
28. In the matter at hand, the Commission finds that the most problematic feature of the prevalent industry practice is the lack of clarity in evaluating advertising representation/omission/vagueness on product body/packageing/labelling, warranty cards, and media campaigns. There is no standard used by the Respondent to enable the consumers to make an informed choice and purchasing decision keeping in view the suitability for use. Therefore, it is safe to presume that consumers are likely to reach false conclusions about the products in question because of such omission or inaccurate or incomplete information. Furthermore, it is not only the marketing but also point-of-sale practices or transactions that have potential to mislead consumers under the circumstances.
29. It is on the record that the Respondents have admitted that in most of the cases a substantial majority of the consumers has to rely on the information provided to them by the retailers and/or mechanics in circumstances. These practices are admittedly confusing for a consumer who wants to make a comparison between the products offered in the market. Hence, it is apparent that consumers could not on their own verify the fact about the capacity, characteristics, and utility of these products. Therefore, the Respondents have failed to disclose material information in light of the expectations and understanding of the ordinary consumers.



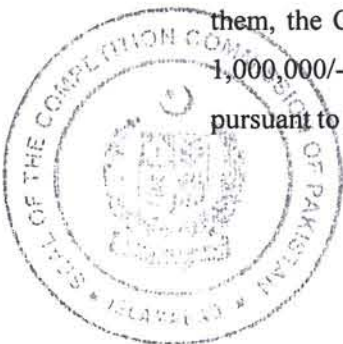
30. An assertion which has constantly been made by the Respondent is that the so-called random numbers printed on battery body or its packaging, are not random but based on a certain nomenclature provided in JI Standards. The Commission finds this contention problematic because such representation conveys more than one meaning to consumers and the Respondents are liable for the misleading interpretations. Therefore, the Commission is concerned with the omission/ambiguity/vagueness and the resulting possibility of the misleading judgment of consumers. The question as to whether or not the mentioning of JI Standards help the consumers to make an informed choice and purchasing decision remains unanswered. Rather, there is a strong likelihood that the consumer is misled by those random numbers or JI Standard codes. Nothing can justify the provision of misleading information to consumers. In today's commercial environment, the influences of advertisement and other promotional material on consumer choice are undeniable. Therefore, it is critical to provide accurate and authentic information about the product because omission, vagueness, or distortion of material information impairs consumers' ability to make an informed purchasing decision.
31. The Respondents' omission/ failure to disclose capacity, either explicitly or implicitly, of the batteries in terms of Ampere-hours (Ah), Voltage (V) on the body, packaging and labelling and other advertising material constitutes dissemination of misleading information to consumers which remains culpable under Section 10 of the Act.

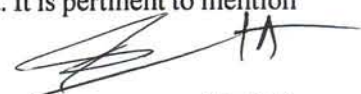
### **DECISION AND REMEDIES**

32. The Commission, having carefully considered the findings of the Enquiry Report, the briefs and materials submitted by the Respondents, the entire mosaic of marketing and transactions as well as its legislative mandate envisaged under Section 10 the Act, finds that the Respondents, except TCL, have contravened the Section 10(2)(b) of the Act by omitting to disclose material information related to their products' capacity and characteristics to consumers on the one hand. The Respondents have also contravened Section 10(2)(a) by engaging in misleading advertisements through various media and hence distorting the competitive fabric of the market, on the other hand. Hence, the Respondents, except TCL, have contravened Section 10(1) of the Act.
33. During the course of proceedings before the Commission, the Respondents have admitted that information pertaining to capacity and usage of their product is vital for consumers to make informed choices and have submitted to withdraw and modify their current advertising and marketing practices as follows: 



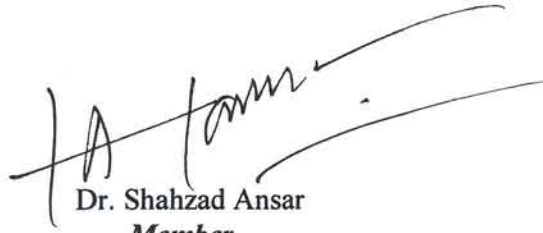
- i. The Respondents admit that their advertising and marketing campaign related to printing of the capacity on their batteries, packaging, or the warranty cards are materially misleading as being without a proper disclosure in contravention of Section 10 of the Act.
  - ii. All advertisements, promotional materials, or instructional manuals pertaining to the battery capacity, printed or otherwise, are to be modified to disclose the capacity of their products within one hundred and twenty (120) days of the passing of this order.
  - iii. The disclosure with respect to the capacity of batteries shall be expressed in "Ampere hour(s)" (AH) and "Voltage" (V) using all these abbreviations on packaging, body, the warranty cards, instructional manuals and any other advertisement or marketing material with the use of bright and conspicuous colour distinct from the colour of the packaging of the pack and will be printed in clear, bold and legible size.
  - iv. The legible size shall cover 3% of the printed area of the battery body and packaging on at least one of the sides (excluding the bottom) and any other advertising and marketing material.
  - v. Furthermore, the Respondents have submitted they shall comply with any and/or all directions of the Commission in the subject proceedings, which, inter alia, include the directions passed by the Commission under Section 38 of the Act read with Regulation 37 of the Competition Commission (General Enforcement) Regulations, 2007, and shall ensure compliance with the provisions of Section 10 of the Act, letter, and spirit, in future.
34. In sum, all material information pertaining to the batteries capacity and their utility and any other conditions should be prominently displayed in clear and unambiguous language.
35. Since the Respondents have submitted to stop the subject advertisement and marketing practices upon initiation of proceedings and have expressed willingness to comply with the provisions of Section 10 of the Act, as is evidenced by the commitments made by them, the Commission is inclined to take a lenient view and minimum penalty of PKR 1,000,000/- (Rupees one million) on each Respondent, except TCL, is being imposed pursuant to Regulation 37 of GER read with Section 38 of the Act. It is pertinent to mention






that this lenient approach has been taken because of the Respondents' earnest desire to seek compliance with the provisions of the Act. The Respondents are, however, warned that in the future, if similar contraventions are found to be committed it may entail serious consequences under the Act.

36. The Respondents are directed to file compliance report in line with paragraph 33 above with the office of Registrar of the Commission and also to deposit the amount of penalty imposed within sixty (60) days of the passing of this order, failing which the Respondent(s) shall be liable to a further fine penalty of PKR 100,000 (Rupees one hundred thousand) per day from the date of passing of this order and initiate any other proceedings as are prescribed under the Act.
37. In terms of the above, the SCNs are hereby disposed of.

  
Dr. Shahzad Ansar  
*Member*

  
Dr. Muhammad Saleem  
*Member*



Islamabad 30<sup>th</sup> March, 2018