



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICES ISSUED TO
DAIRY COMPANIES
FOR DECEPTIVE MARKETING PRACTICES
(F. NO: 179A/OFT/DAIRYCO/CCP/2015)

Dates of hearing 19-05-2016
28-07-2016
16-08-2016

Commission Ms. Vadiyya Khalil
Chairperson

Dr. Shahzad Ansar
Member

Mr. Ikram Ul Haque Qureshi
Member

Present on behalf of:
M/s Engro Foods Ltd

Mr. Andaleeb Alvi, VP Legal Affairs
Mr. Ahsan Afzal Ahmed, Director Marketing
Mr. Faiz Chapra, Manager Legal
Syed Salman Ali, General Manager
Dr. Sarfaraz Ahmed, Manager Regulatory Affairs
Mr. Rehan Saeed Khan, GM Corporate Affairs
Mr. Imran Ahmed, Director Technical

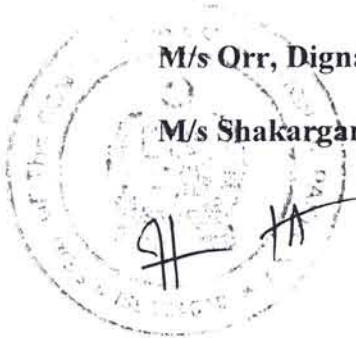
M/s Fauji Foods Pakistan
(formerly M/s Noon Pakistan
Ltd)

Mr. Muhammad Imran, Unit Manager Finance
Mr. Mujeeb-ul-Haq, Section Manager Taxation &
Compliance
Barrister Shahid Raza, Partner
Syed Hassan Ali Raza, Sr. Associate
Mr. Rafay Azim, Associate

M/s Orr, Dignam & Co

M/s Shakarganj Foods

Mr. Faraz Ahmed, Sr. Vice President Finance
Mr. Waqas Qadeer Shaikh, Advocate High Court



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Syed Hassan Ali Raza

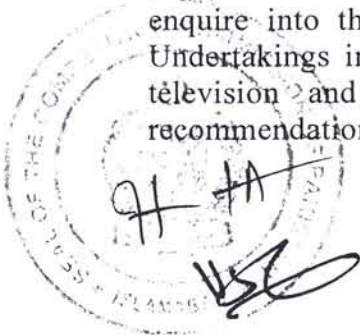
Competitive Commission of Pakistan
GPO, Islamabad

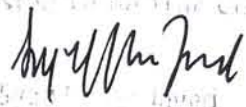
ORDER

1. This order shall dispose of the proceedings initiated pursuant to the show cause notices No. 16/2016, 18/2016 and 19/2016 dated 15.04.2016 (hereinafter, the **SCN** or the **SCNs**) issued for, *prima facie*, violations of Section 10 of the Competition Act, 2010 (the 'Act') to the following companies respectively:
 - a. Engro Food Limited (**EFL**)
 - b. Noon Pakistan Limited (**NPL**)
 - c. Shakarganj Food Pakistan Limited (**SFPL**)
2. The above-named companies, being engaged in the business of manufacturing, marketing and sale of a range of dairy products, fall within the definition of 'Undertaking' provided under Section 2(1)(q) of the Competition Act, 2010 (the **Act**). EFL, NPL, and SFPL are collectively referred to as the '**Undertakings**' and individually as the '**Undertaking**'.
3. The main issue in this matter is whether the Undertakings' marketing campaigns relating to their dairy drinks, dairy liquids and/or tea whiteners constitute deceptive marketing practices in terms of Section 10 of the Act.

Background

4. **EFL** is engaged in the manufacturing, marketing, and sale of a range of dairy products, frozen desserts and fruit drinks across Pakistan. **NPL** is engaged in the manufacturing, marketing and sale of various dairy products and juices across Pakistan. It was subsequently acquired by Fauji Fertilizers Bin Qasim Limited (FFBQL) on 13.10.2015. **SFPL** is also engaged in the business of manufacturing, marketing, and sale of dairy products, juices, and beverages across Pakistan.
5. Concerns were raised by Mr. Abu Ahmed *vide* an email dated 12.01.2015 that the Undertakings are marketing 'dairy drinks' or 'dairy liquids' and liquid/powered 'tea whiteners' as milk or as milk substitutes, while using various proportions of milk extracts/reconstitutes in their products, which cannot be considered, marketed, advertised, and sold as milk and/or as milk substitutes.
6. After an initial probe by the Office of Fair Trade ("**OFT**"), the Competition Commission of Pakistan (the '**Commission**') took *suo motu* notice pursuant to Section 37(1) of the Act and appointed an enquiry committee (the "**Enquiry Committee**") to enquire into the advertising, marketing, labelling and packaging practices of the Undertakings in the print media and in commercials aired on national and private television and radio networks and submit a report of their findings and recommendations with regard to the following:



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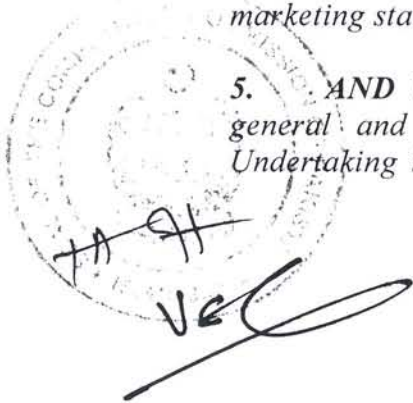
- a. Whether the conduct of the Undertakings is capable of harming the business interests of other undertakings in terms of Section 10 (2)(a) of the Act?
 - b. Whether the Undertakings are disseminating false or misleading information to consumers lacking a reasonable basis, related to character, properties, suitability for use or quality of products in terms of Section 10(2)(b) of the Act?
 - c. Whether the Undertakings are involved in the false or misleading comparison of products in the process of advertising in terms of Section 10 (2)(c) of the Act?
7. The Enquiry Committee submitted its report on 16.03.2016 (the **Enquiry Report**), which concluded that the above-named Undertakings are, *prima facie*, engaged in deceptive marketing practices and the Commission may consider initiating proceedings against the munder Section 30 of the Act for violation of Section 10 of the Act.
8. The Undertakings were issued the **SCNs** on 15.04.2016, calling upon them to reply in writing within fourteen (14) days and to appear before the Commission to place facts and materials in support of their contentions and to avail the opportunity of being heard on 04.05.2016. The relevant parts of the SCNs, the parties' submissions and the Commission's analysis and decision is as under:

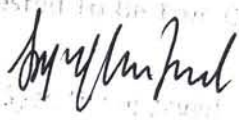
Engro Food Limited

9. According to paragraph 122 of the Enquiry Report, EFL's product 'Dairy Omung' and associated marketing campaign as a whole gives a firm impression that OMUNG is milk and not a Dairy Drink. Moreover, the disclosure on the website of the undertaking also reveals that Dairy Omung is an alternative to loose milk. Thus the advertisement of the Undertaking is not only deceiving the consumer about the character, properties, suitability for use and quality of their product but is also capable of harming the business interest of other undertakings and, *prima facie*, violates Section 10(1) in terms of Section 10(2)(a) & (b) of the Act. The Undertaking at the same time is also involved in the wrong comparison of their Dairy Drink with loose milk thus, in terms of Section 10(2)(c) of the Act. The relevant parts of the SCN issued to EFL are reproduced herein below:

"4. AND WHEREAS, in terms of the Enquiry Report in general in paragraph 33 to 46 in particular, the Pakistan Standards and Quality Control Authority (the PSQCA) and the Punjab Food Authority (the PFA) have provided packaging and marketing standards for dairy products to follow;

5. AND WHEREAS, in term of the Enquiry Report in general and paragraphs 93 and 94 in particular, the Undertaking is engaged in the production and sale of dairy



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drink 'DAIRY OMUNG', (the 'Product') and the liquid tea-whiteners 'Tarang' and 'Tarang Elichi';

6. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 95 to 103 in particular, it appears that the Undertaking's marketing claims regarding the Product give impression that it is milk and not a dairy drink, which prima facie amounts to the distribution of false or misleading information to consumers, including the distribution of the information lacking reasonable basis, related to price, character, method or place of production, properties, suitability for use, or quality of goods within the meaning and scope of Section 10(2)(b) 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 100 and 103 in particular, it appears that the Undertaking has marketed its Product as an alternate to loose milk, which prima facie amount to the false and misleading comparison of goods in process of advertising within the meaning and scope of Section 10(2)(c) of the Act, in violation of Section 10(1) of the Act;

8. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 95 to 103, it appears that the Undertaking's marketing claims regarding the Product are unsubstantiated and thus prima facie constitute 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;"

Submissions

10. In its written reply to the SCN dated 19.04.2016 and submissions during the course of hearings held on 19.05.2016 and 28.07.2016 before the Commission, the submissions of EFL's counsels are summarized as under:
- i. EFL is licensed by the Pakistan Standards and Quality Control Authority (PSQCA) to manufacture Dairy Omung, which is valid until 30.04.2017. The findings of Enquiry Report are erroneous in so far as each package at the top clearly mentions that the product is Ultra High Treated/homogenized with manufacturing/expiry dates and batch number and toned at 3% fat.
 - ii. Dairy Omung not only complies with labeling requirements of the PSQCA, rather it exceeds the requirements for dairy drink products stipulated by the PSQCA. The

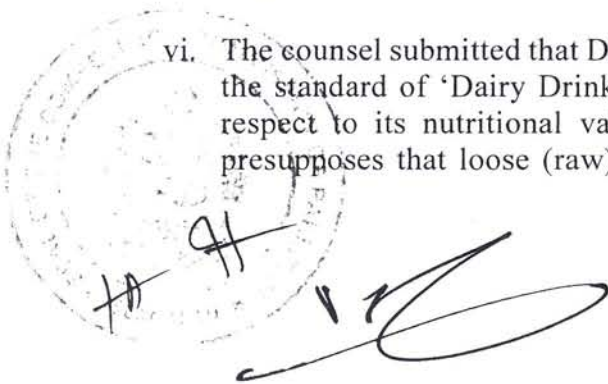
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Special Officer General
Competition Commission of Pakistan
Government of Pakistan

word Dairy Drink appears on the Dairy Omung packaging four times and on four out of five sides of the package: the front, the back and the sides of the packaging listing the product ingredients. For consumer's convenience, 'Dairy Drink' is written both in Urdu and English on the packaging in bold. Since its inception in 2011, Dairy Omung has always been marketed and compared with loose milk. The Television Commercial ("TVC") too, compares Dairy Omung to loose milk. By showing consumers a glass of loose (raw) milk and a glass of Dairy Omung, the TVC highlights that the product is safe from dangerous germs in comparison to loose (raw) milk. He contended that the focus back then and today remains on the safe and hygienic process employed in the manufacturing of Dairy Omung.

- iii. In addition, EFL's counsel referred to the Commission's Letter Ref: No. 74/Reg/Comp/DAIRY OMUNG/CCP/2011 dated 16.09.2011 (the CCP Letter 2011), wherein the OFT had sought certain information with respect to DAIRY OMUNG. The counsel contended that the said proceedings were initiated with a particular focus of the Commission on the aforementioned advertisement/campaign. In its reply dated 23.09.2011, EFL had denied any deceptive marketing practices to its consumers or competitors. According to the counsel, upon receipt of a satisfactory explanation, the Commission had dropped the proceedings. Hence, the SCN on the subject may be vacated.
- iv. On merits, the counsel submitted that all dairy products whether powdered or liquid, are processed to fulfill various usages of milk (primarily drinking tea and dessert making). They are all alternatives to loose (raw) milk for consumers, since loose (raw) milk available in Pakistan varies in quality, consistency and process across the outlets and geographies. In contrast, Dairy Omung, while meeting all regulatory requirements of dairy drink/liquid is an alternative to loose (raw) milk too.
- v. With reference to Dairy Omung's slogan 'Qudrat sa shaffaf', the counsel submitted that the phrase has been taken by the Commission to mean pure as nature, whereas the dictionary meaning of 'shaffaf' is clear as nature, which indicates hygiene of the product as is commonly used as 'saaf shaffaf'. The Counsel asserted that Dairy Omung is indeed as hygienic as natural milk as its source. The milk used to produce Dairy Omung goes through twenty-eight stringent quality, adulteration, and contamination tests to ensure that the product is pure and natural. Any milk batch, which fails even a single test is rejected and is not used. Furthermore, any microbiological growth during the handling and transportation of milk is eliminated through UHT and aseptic packaging. Dairy Omung does not contain any non-dairy ingredients except permitted food additives and stabilizers sourced from natural plants. The manufacturing process of Dairy Omung ensures that it is a pure dairy drink.
- vi. The counsel submitted that Dairy Omung ought to be tested, for its purity and against the standard of 'Dairy Drink' and not that of 'Milk' prescribed by PSQCA. With respect to its nutritional value, the Counsel submitted that the Enquiry Report presupposes that loose (raw) milk available in the market places conforms to the

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standards prescribed for 'Milk', which is erroneous and not supported by any findings. According to EFL, in recent independent studies carried out in the state of loose milk available to the consumers, there is a general consensus on the higher degree of adulteration in loose milk.

- vii. The counsel submitted that it has quite rightly been observed in the Enquiry Report that the TVC of Dairy Omung does not compare it with any other dairy drink except for loose (raw) milk. With respect to the impression that Dairy Omung is sought to be passed off as 'milk', it submitted that the reference to purity and nutritional value of Dairy Omung is advertised as a substitute/alternate to loose (raw) milk and not pure milk. The Enquiry Report and the SCN are silent on the quality, hygiene, and safety of the loose (raw) milk. The Enquiry Report does not reflect any tests or studies carried out or taken into account to ascertain the present state of loose milk being sold across Pakistan. Therefore, the premise of charging EFL in violation of Section 10 of the Act is misconceived as nowhere does the TVC compare Dairy Omung to pure milk or as an alternative to pure milk. It only advertises Dairy Omung as an alternative to loose (raw) milk. Therefore, any standards, for the purposes of ascertaining whether EFL has been in violation of Section 10 of the Act, should that be of loose (raw) milk and not that of pure milk or milk being sold by various brands.
- viii. The Counsel submitted that EFL is not distributing any false or misleading information capable of harming interests of other undertakings. Moreover, the Enquiry Report does not offer any findings on the quality, hygiene or even compliance of loose (raw) milk with the standard prescribed by PSQCA for milk. Therefore, violation of subsection (a) of Section 10(2) of the Act cannot be alleged even if 'gawala/dodhi's' somehow fall within the definition of an 'undertaking' under Section 2(1)(q) of the Act.
- ix. EFL denied that it is distributing false or misleading information to consumers because the TVC clearly states that Dairy Omung is an alternative to the loose (raw) milk, and the comparison as such is neither false nor misleading. Moreover, the Commission has not conducted any study or enquiry on loose (raw) milk, the allegations of 'deceptive marketing practices' under Section 10 of the Act as against EFL are unwarranted.

Issues

11. The main issues identified are therefore as follows:
 - a. Whether EFL's advertising practices are capable of disseminating false and misleading information to consumer's detriment in violation of Section 10(2) (b) of the Act?
 - b. Whether EFL's advertising and marketing practices draw a false and misleading comparison of Dairy Omung to loose (raw) milk to consumer's detriment in violation of Section 10(2)(c) of the Act?

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G-10/1, F-7/2, Islamabad

- c. Whether EFL's advertising and marketing practices are capable of harming business interests of the competing undertakings in violation of Section 10(2)(a) of the Act?

Analysis

12. Section 10 of the Act prohibits 'deceptive marketing practices' and as such encompasses protection of consumers and harm to the interests of the competing businesses caused by the distribution of false or misleading information in the process of marketing and advertising by another undertaking. With respect to the matter at hand, the Commission will examine EFL's advertising and marketing practices to promote Dairy Omung as an alternate or substitute of loose (raw) milk in the light of relevant sub-sections of Section 10 of the Act.

Section 10(2)(b)

13. Section 10(2)(b) of the Act provides that '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' constitute deceptive marketing practice for the purposes of Section 10(1) of the Act and are, therefore, prohibited.
14. EFL in its advertising/marketing practices of Dairy Omung have represented or omitted expressly or by implication that the Product is dairy drink and not milk. In its written submissions and hearings and from the disclosure on the company's website, it is clear that Dairy Omung is an alternate to loose milk. The TVC in question contains the following statements and depictions:

- A. Out of a total of 35 seconds, 19 seconds of the TVC highlights the frustration of a customer when her tailor insists that her own design is better than the customers' suggestions. This part of the TVC ends with:

برالگتا ہے تا۔۔۔۔
گھر کے معاملے میں کوئی باہروالا اپنی ملائے۔۔۔۔

[Don't you feel bad when someone interferes with your household matters?]

- B. In the next part of the TVC a milkman on a motorcycle is delivering milk at a house, while the housewoman looks through the window, and the announcer comments

پھر اس خدا کی نعمت میں ملاوٹ کیوں؟؟
اس لئے ڈیری امٹنگ ہے ملاوٹ سے پاک، غذائیت سے بھرا۔۔۔۔

[Then why this adulteration in God's natural product?]



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Syed M. J. J. J.
Competition Commission of Pakistan
Government of Punjab
Islamabad

[That's why Dairy Omung is free from any adulteration and full of nutrition]

C. Up next, the house woman pours out two glasses of Dairy Omung. Thereafter, two children are shown drinking Dairy Omung. The TVC ends with display of three packages of Dairy Omung of different volumes with a glass full of white liquid, and the following slogan:

ذیری امنگ --- قدرت ساشٹاف!
[Dairy Omung – As pure as nature]

15. Considering the packaging of Dairy Omung, each pack enlists the contents in terms of 'milk solids', 'fats', 'minerals', food additives and preservatives, which are generally found on tetra packs of UHT 'milk'. In addition, it states that the product is 'not suitable for lactose intolerant' and 'not a substitute for breast milk'. The front side of the package displays a glass being filled with white liquid (presumably milk) as under:



16. It is noted that EFL, in the written submissions and hearings, has emphasized on the purity and hygienic process employed in the manufacturing of Dairy Omung. The website of EFL provided product's description as:

"Let's drink to a purer life"

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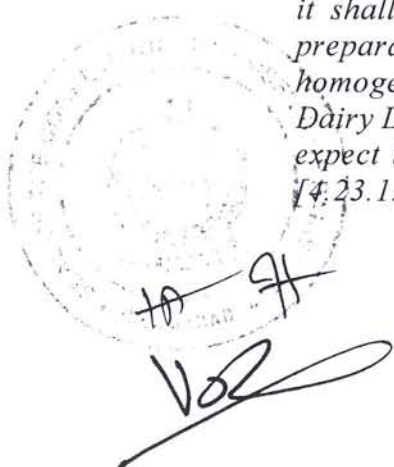
Let's drink to a purer life. The days of a pure, nutritious alternative to loose milk being out of common man's reach are over. Dairy Omung has been a ray of hope for people: providing them UHT dairy drink that's within their means. 100% sourced from dairy; OMUNG is easy to digest and mixes well with honey, tea, fruits or any such accompaniments, becoming a nourishing drink that is loved and enjoyed by all. Dairy Omung carries all enriching qualities and purity of milk which perfectly fits the budget of humble Pakistani households. It gives one the strength and optimism to strive harder in life and welcome each day with a smile."


17. Before examining the nature and impact of the claims made by EFL in its marketing campaigns and likely reaction of consumers, the Commission will first highlight the standards that differentiate 'Dairy Drink' from 'Milk'. Reference is made to descriptions provided by the Punjab Food Authority (PFA) and the PSQCA.

"Milk" means the normal, clean and pure secretion obtained from the mammary glands of a healthy cow, buffalo, goat, camel or sheep (halal milk animals) whether boiled, homogenized, pasteurized, sterilized, or UHT and includes standardized reconstituted milk. Milk shall contain not less than 34 percent of milk protein in milk solids other than milk fat and lactose not less than 4.6 percent of milk solids other than milk fat. It shall be free from colostrum. Milk shall not contain any added water, permitted food additives, other added substances, traces of antibiotic substance and hormonal residue. [Milk, Punjab Pure Food Rules, 2011, Appendix II, Milk and Milk Products]

'Standardized Milk' means milk, standardized to contain not less than 12.4% of milk solids, including not less than 3.5% of milk fat provided that the term standardized refers to standardization of fat contents. [4.7 Dairy Safety & Standard for Milk and Milk Products, PS: 487-2008, Standard Development Center, PSQSA]

'Dairy Drink' means milk/milk based product which has been reduced to the prescribed level of milk fat and milk SNF. It shall contain not less than 7% of milk solids other than milk fat and it shall contain 3% of milk fat provided that the source of preparation is from Halal Milk Animals. It shall be homogenized, pasteurized, and sterilized and UH treated. The Dairy Drink shall be free from any added non-dairy ingredients except the permitted food additives and nutrient supplements. [4.23.1., Dairy Safety & Standards for Milk and Milk Products,



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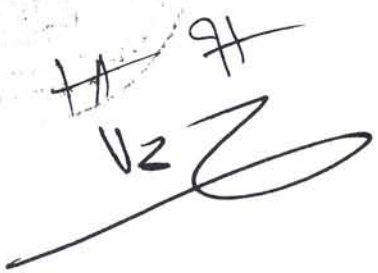
18. It is pertinent to mention that the Commission has quoted the above standards to differentiate between the two products i.e. dairy drink and standardized milk not to enforce the standards, but to evaluate the truthfulness of claims made in the marketing campaigns of EFL and other Undertakings. The Commission's mandate is to assess whether the information disseminated by EFL through various means of communication including, among others, *via* TVCs and packaging is false or misleading to consumer's and/or competitor's detriment in violation of Section 10 of the Act.
19. Based on the PFA and the PSQCA standards, it is observed that dairy drink or dairy liquid is milk based product sourced, manufactured and reconstituted up to 3% of fat and 7% of milk solids. However, it should be free from any non-dairy ingredients such as laboratory formulations, except permitted food additives and nutrient supplements. Accordingly, Dairy Omung conforms to the standards for dairy drink and not milk.
20. On the other hand, 'milk' does not contain any added water, additives, and any other substances. Hence, the two products are different in their composition, character, properties, method of production, quality as well as the use. Neither PFA nor PSQCA standards suggest *inter alia* that loose (raw) milk is not milk **or is unhygienic or of low quality**. Rather the standards clearly suggest dairy drink is a product different from milk. Also, they do not suggest that dairy drink can be taken as an alternate to loose (raw) milk.
21. Considering the totality of the facts and Dairy Omung's TVC and packaging, it is necessary to evaluate how ordinary consumers are likely to respond in the circumstances.
22. In its **Zong Order dated 29.09.2008**, the Commission has established that for the purposes of Section 10 of the Act and considering the advertised product, the Commission will define the term 'consumer' as 'ordinary consumer' as follows:

"32. ...the term 'consumer' under Section 10 of the [Act] is to be construed as an 'ordinary consumer' but need not necessarily be restricted to the end consumer of the goods or services".

23. While examining an advertisement, the Commission's approach is:

"35. ...to evaluate complete advertisement and make an opinion regarding deception, which is to be formulated on the basis of net general impression conveyed by them and not on isolated scripts".

24. Regarding false or misleading information, the Commission has observed that:



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"23. ...False information can be said to include: oral or written statements or representations that are: (a) contrary to the truth or facts are 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 essentially include oral or written statements or representations that are: (a) capable of giving the wrong impression or idea, (b) likely to lead into error of conduct, thought 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"

25. In view of the above, the Commission examines a deceptive practice from the perspective of an ordinary consumer of the goods or services in question. The above excerpts clearly establish that an advertisement is deceptive if it is contrary to the truth or facts, not in accordance with reality or actuality, has stricter and stronger connotation, is not readily open to interpretation, capable of giving wrong impression or idea, likely to lead into error of conduct, thought or judgement, and tends to misinform or misguide owing to vagueness or any omission to the consumer's detriment.
26. It is observed that Dairy Omung's TVC coupled with EFL's website contents, expressly or by implication omit material information that the product is 'milk reconstitute' or 'milk-based product with certain additives and food stabilizers'. The **visual**/aural imagery of the TVC is capable of conveying more than one meaning to consumers and to create a false or misleading impression in the minds of ordinary **consumers** regarding the nature of the product. The concern is heightened by the fact that 'dairy drink' is a technical classification of dairy/non-dairy based products and is not well-known in Pakistan. There is strong likelihood that consumers could draw a false conclusion about the character and properties of the product, especially when it is compared to raw milk. Thus EFL marketing/campaign material to promote Dairy Omung is likely to misguide the consumers regarding the true nature, characteristics, properties and use of the product, hence is in violation of Section 10(2)(b) read with Section 10(1) of the Act.
27. Furthermore, as noted above, EFL has been advertising Dairy Omung as 'Quadrat sa Shafaf', comparing it with milk and representing that it is pure or clear as nature, hence "natural". Thus, the claims are not clear and conspicuous enough to make easily noticeable and easily understandable by ordinary consumers.
28. In regard to the claim that Dairy Omung is natural, reference is made to the '**Criteria for the Use of the Terms Fresh, Pure, and Natural etc. In Food Labelling of 2008**' (the 'Criteria') prescribed by the United Kingdom's Food Standard Agency:

51. 'Natural' means essentially the product is comprised of natural ingredients, e.g. ingredients produced by nature, not the work of man or interfered by man. It is misleading to use the term to describe goods or ingredients that employ chemicals to change their composition or comprise the products of new technologies, including the additives and flavouring that are the product of the chemical industry or extracted by chemical processes.

29. In the context of Dairy Products, the Criteria provide that:

52. The term 'natural' has been used on certain dairy products for many years, to signify that the product is manufactured only from milk, using only the necessary, associated fermentation culture and free from other ingredients or additives, such as preservatives, flavouring, colours i.e. they are 'plain', unflavoured products.

30. In regard to health and nutritional claims, the Criteria provide that:

54. That 'naturally/natural' means that either nothing has been removed or nothings have been added to the food, and additionally that food has not been subjected to any processes or treatment to render it such that it meets the conditions.

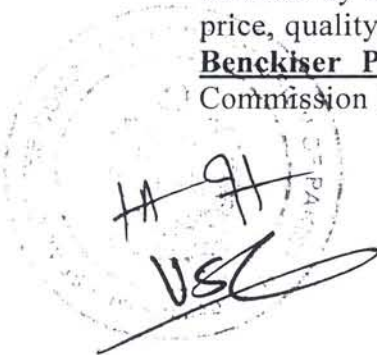
and:

60. Claims such as 'natural goodness', 'naturally better', or 'nature's way' are confusing and ambiguous. They should not be used are very likely to be misleading if applied to products not meeting the 'natural criteria'.

31. EFL's above noted claim pertaining to Dairy Omung is ambiguous and confusing. Representing dairy drink/liquid as milk and the claim that the product is as 'pure/ clear as nature' also lacks a reasonable basis as to product's character, method, production process, and properties and is in violation of Section 10(1) read with Section 10(2) (b) of the Act.

Section 10(2)(c):

32. Section 10(2)(c) of the Act prohibits 'false and misleading comparisons of goods or services in the process of advertising'. Certain marketing campaigns may draw a comparison of goods and/or services offered by one undertaking to the goods and/or services by others on the market. Such comparisons may relate to factors involving price, quality, range or volume. **In the Matter of Show Cause Notice to M/s Reckitt Benckiser Pakistan Limited** dated 11.8.2015, reported in **2015 CLD 1864**, the Commission has observed that similar to Section 10(2)(b), a comparison of goods



and/or services lacking a 'reasonable basis' will be considered to be false and misleading in terms of Section 10(2)(c) of the Act.

33. Similarly, the Commission in the Matter of Procter and Gamble dated 23.02.2010 has observed that "*the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement*". The doctrine was first enunciated in Pfizer, Inc., 81 F.T.C. 23 (1972) by the Federal Trade Commission (the FTC) of the United States, which provides that reasonable basis is to be determined by taking into account six 'Pfizer factors':

1. the type of claim;
2. the benefits if the claim is true;
3. the consequences if the claim is false;
4. the ease and cost of developing substantiation for the claims;
5. the type of product; and
6. the level of substantiation experts in the field would agree is reasonable.

34. It is observed that regarding health and safety claims, the FTC requires a relatively higher level of reasonable basis in terms of 'competent and reliable scientific evidence' to substantiate the claims. With regard to identifying the claim, the FTC considers that "*advertising should not focus just on individual phrases or statements, but rather should consider the ad as a whole, assessing the net impression*". [FTC's Dietary Supplements: **An Advertising Guide for Industry**]

35. In the similar vein, the Commission in the matter of Proctor & Gamble Pakistan (Private) Limited reported as **2010 CLD 1696** has recognized the concept of 'reasonable basis' as under:

"The concept of reasonable basis is an established concept in the USA and was introduced after much deliberations and public comments through policy statement regarding advertising substantiation. It provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement. Moreover, in order to determine the general net impression of the claim, the claim cannot be evaluated as an isolated script".

36. It is observed that Dairy Omung's TVC and associated marketing/campaign material while comparing it to loose (raw) milk makes absolute claims that milk supplied at the door-step by milkmen or otherwise available at traditional retail shops/outlets is adulterated and unhygienic. In its reply to the SCN paragraph (iii) EFL has submitted that:

"Through Commission's Letter Ref: No. 74/Reg/Comp/DAIRY OMUNG/CCP/2011 dated 11.09.2011 (the **CCP Letter 2011**), the **OFT** sought information with respect to Dairy Omung. The said



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proceedings were initiated with a particular focus of the Commission on the above-mentioned advertisement campaign wherein Dairy Omung was compared with loose milk sold by 'gawalas/dodhies' to the end consumer".

37. EFL has claimed in paragraph (iv)(c) of the reply to the SCN:

"Dairy Omung is being offered as an alternative to loose milk since 2011 and by now, the public is clearly aware of the quality, hygiene, and safety attributed to Dairy Omung as compared to loose milk. It is reiterated that the [Commission] has already investigated and probed this aspect at a great length in its proceedings initiated vide CCP Letter 2011. Raising this issue again without conducting an enquiry or study on loose milk is unwarranted".

"In 2011 the TVC, Dairy Omung was compared with loose milk supplied at the door-step...the TVC continued the comparison of Dairy Omung to loose (raw) milk and highlighted that Dairy Omung was safe from dangerous germs."

38. To support its arguments with respect to quality and hygiene of Dairy Omung in comparison to loose (raw) milk, EFL has relied on the following:

Annex	Purpose	Highlights
E1	Secondary Evidence-Proof of adulteration in milk (institute of agricultural sciences, University of Punjab	Aflatoxin has severe health implications & in 3% of the tested sample of this study the level of Aflatoxin M1 was higher than US defined global specifications
E2	Secondary Evidence-Proof of adulteration in loose milk Pakistan (Department of Livestock Management, University of Agriculture Faisalabad	Highlights physical composition defects in the form of watery inconsistency, dirt, and sedimentation. Prevalence of highly SNF indicating possibility of adulteration
E3	Secondary Evidence – Proof of adulteration in loose milk in Pakistan (University of College of Agriculture, BZU, Multan	Refers to a study from Lahore that deemed 60.15% for human consumption because of the presence of substance like formalin, starch, and urea
E4	Secondary Research – Proof of adulteration in loose milk in Pakistan	Highlights a mix of several Pakistani researchers that have identified adulteration between the range of 97% to 32% in milk samples in various parts of Pakistan

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 Government of Pakistan

E5	Secondary Research – Proof of adulteration in loose milk in Pakistan (University of Agriculture, Faisalabad)	[-]
E6	Secondary Research – Proof of adulteration in Pakistan (Hyderabad)	[-]
E7	Secondary Research – Proof of adulteration in loose milk in Pakistan	43% adulteration in Lahore in tested samples.
E8	Analysis of the quality of loose milk (Engro Loose Milk)	Contamination of vegetables, oil, water, detergents.
E8	EFL analysis of the quality of loose milk	Aflatoxin and detergents identified
E9	EFL analysis of the quality of loose milk (Lahore)	17% detergents in milk samples
E10	EFL analysis of the quality of loose milk (Lahore)	Sugar, Sucrose 13%, Sorbitol 13%, Detergents 3%.
E11	EFL analysis of the quality of loose milk (Lahore)	Detergents, 8% Salt 18%

39. With regard to Section 10(2)(c), the issue before the Commission is not the possible adulteration of loose milk, but the wrongful comparison between milk and dairy drinks. In simple terms, apples cannot be compared with oranges. Whether or not the loose milk is adulterated is a non-issue in the current proceedings, unless EFL is arguing that Dairy Omung is also adulterated. Of course, they have not made this contention and hence the point is moot. Even otherwise, it is one thing to say that raw milk is adulterated and another to prove that all raw milk sold anywhere in the country is unhygienic and adulterated.

40. With regard to EFL's Counsel's argument that the Commission has already examined the matter in 2011 *vide* CCP Letter 2011 and denoting the request for provision of information on the Commission as proceedings under Section 30 of the Act are based on misunderstanding of the Commission's proceedings under the Act. The Commission formal proceedings begin with the initiation of inquiry under Section 37 of the Act. If a *prima facie* violation of any Chapter II provisions is found in the enquiry, adjudicatory proceedings are then initiated under Section 30 of the Act, the start of which is marked with the issuance of the show cause notice. The adjudicatory proceedings culminate with the passing of an order under Section 31 of the Act.

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Competitive Commission
General Manager
Islamabad

41. The CCP Letter 2011 sent by the OFT Department for provisions of information merely does not in any way constitute proceedings under the Act. In view of the foregoing, it must be noted that the Commission has never initiated an enquiry, issued a show cause notice or conducted a hearing on this matter before the current proceedings. Hence, EFL's argument in this respect is untenable.
42. EFL has claimed that it has always compared Dairy Omung to loose (raw) milk supplied by milkmen at the door-steps or through other channels of distribution. However, it has not provided any competent reliable scientific evidence to substantiate its claim that raw or loose milk supplied at the door-step is reasonably comparable with dairy drinks. Such claims and comparisons are, therefore, capable of deception and are in violation of Section 10(2)(c) of the Act.


Section 10(2)(a):

43. Section 10(2)(a) of the Act provides that 'the distribution of false or misleading information that is capable of harming the business interests of another undertaking' constitutes deceptive marketing practice for the purposes of Section 10(1) of the Act.
44. Before proceeding on Section 10(2)(a) violation, it is pertinent to mention that what constitutes undertaking under the Competition Act 2010. The undertaking is defined under Section 2(1)(q) of the Act as:

"Undertaking" means any natural or legal person, the governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings.

45. The above definition suggests that the key consideration while evaluating the status of an undertaking for the purposes of the Act is whether it is engaged in a commercial or economic activity, regardless of the legal status of the person or entity and the way in which it is financed, incorporated or exists. Thus the formal structure of a business is not a factor in the identification of an undertaking for the purposes of this Act.
46. As noted above in paragraph 10(viii) above, in its reply to the SCN, EFL has contended that 'gawalas/dodhies' (milkmen) or the person delivering milk at the door-step do not fall within the category of the undertaking. It is pointed out that the definition of the undertaking is quite clear in this regard and needs to be interpreted with receptiveness and consistent with the intent of the legislature. The Commission is of the considered opinion that the definition of 'Undertaking' does encompass any natural person or other entity, who in any manner, is engaged in commercial or economic activity in Pakistan or any part of it. Hence, individuals and undertakings whether or not incorporated fall squarely within the definition of the undertaking for the purposes of the Act.

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47. In regard to harm to competing business undertakings, the Commission has in its **Order in the Matter of Jotun Pakistan (Pvt) Limited** dated 17.03.2015, held that:

“14. ...to prove conduct under Section 10(2) (a) of the Act, it is not necessary to show actual harm to a competitor. It is sufficient to show the existence of deceptive marketing practice that has the potential to harm the business interests of the competitors...”

48. As observed above, the basis of EFL’s claim to show the comparative utility of Dairy Omung in contrast to loose (raw) milk is oversimplified and unsubstantiated. Thus the Commission holds that EFL’s claim, Dairy Omung’s TVC and associated marketing campaigns have the potential of harming interests of competing business, which include not only the ordinary milkmen, retail channels, but also other branded milk producers and distributors, in violation of Section 10(1) read with Section 10(2)(a) of the Act.

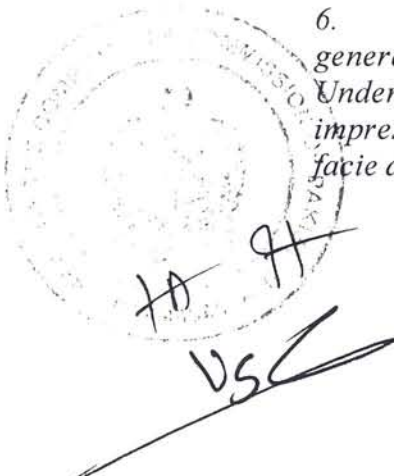
Noon Pakistan Limited

49. NPL was incorporated on 26 September 1966 as a Public Limited Company. It was the first company in Pakistan to operate a spray dryer for processing of milk powder. The undertaking was principally engaged in processing and sale of various dairy products and juices with the brand name of Nurpur. The undertaking has recently been acquired by Fauji Fertilizer Bin Qasim Limited (FFBQL). As observed in paragraph 87 of the Enquiry Report, the last packaging available in the market did not contain the words 'Dairy Drink'. In the absence of such disclosure, it is highly unlikely to ascertain whether the product is milk or dairy drink. Based on *prima facie* contravention of Section 10(2)(a) and 10(2)(b), the Undertaking was issued the SCN, the relevant part of which are reproduced herein below:

*“4. **AND WHEREAS**, in terms of the Enquiry Report in general in paragraph 33 to 46 in particular, **the** Pakistan Standards and Quality Authority (PSQCA) and the Punjab Food Authority (PFA) have provided packaging and marketing standards for dairy products to follow;*

*5. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraph 85 and 86 in particular, the Undertaking is engaged in the production and sale of the dairy drink 'Dairy Rozana', (the '**Product**') and the liquid tea-whiteners 'Chai Mix';*

*6. **AND WHEREAS**, in term of the Enquiry Report in general and paragraphs 87 to 92 in particular, the Undertaking’s marketing claims regarding the Product give impression that it is a milk and not a dairy drink, which *prima facie* amounts to distribution of false or misleading information*



to consumers, including the distribution of information lacking a reasonable basis, related to price, character, method or place of production, properties, suitability for use, or quality of goods within the meaning and scope of Section 10(2)(b) 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 87 to 92 in particular, it appears that the Undertaking's marketing claims regarding the Products are unsubstantiated and thus prima facie constitute 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."

Submissions

50. The submissions and arguments by NPL's legal representative during the course of hearings are summarized as under:
- a. The Enquiry Report and the SCN are predicated on an alleged breach of the laws and standards of the PSQCA and the PFA in respect of which the Commission lacks jurisdictions.
 - b. The Enquiry Report and the SCN arise out of a complaint referred to in the Commission's Letter dated 26.11.2016 by an enquiry officer. The complaint was neither shared with NPL nor was it given an opportunity of being heard before the Commission contrary to Regulation 7 of the Competition Commission of Pakistan (Conduct of Business) Regulations 2007 (CGER). After receiving the complaint the Commission did not proceed in accordance with Regulation 17 to 24 of the CGER.
 - c. The SCN is based on the unsubstantiated findings (in paragraph 87 and 120 of the Enquiry Report) that 'the enquiry officers have found the product [Dairy Rozana] in the market during their survey in the course of enquiry' and 'the last packaging available in the market doesn't contain the word 'Dairy Drink' as prescribed by the PSQCA. No details and/or evidence have been adduced about the place(s) visited without which there is no case for NPL to answer. To hold otherwise would be tantamount to denying NPL the opportunity to challenge the alleged facts on which the SCN is based, contrary to the principle of natural justice.
 - d. The Enquiry Report and the SCN are infructuous as NPL ceased production of Dairy Rozana on 13.10.2015 and no longer produces, markets or sells the same after its acquisition by FFBQL. The shelf life of the last batch dispatched on 27.10.2015 of Dairy Rozana ended on 11.01.2016. The SCN is based on

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marketing claims by NPL in violation of Sections 10(1) and Section 2(a) and 2(b) of the Act. However, as provided in paragraph 88 of the Enquiry Report, it has been acknowledged that NPL has not marketed the product through TVC and other advertising campaigns or website disclosures. Moreover, the Commission is not competent to enforce the standard of the PSQCA as they are adopted voluntarily. Such standards become binding if it is stipulated in the contract, which is executed by an undertaking with the PSQCA. The Enquiry Report has failed to prove deceptive marketing practices by NPL with reference to objectively verifiable criteria instead of a mere 'impression' which is subjective, unreasoned and contrary to Section 24(A) of the General Clauses Act 1897.

- e. Notwithstanding with the foregoing, if the Commission finds that NPL has been in contravention of the provision of the Act in considering any action under Section 31 and 38 of the Act, it is prayed that the Commission may take into account the following mitigating factors:
 - i. NPL did not make any false or misleading, affirmative statements, but rather the alleged contravention is based on a failure to label the product as a 'Dairy Drink', the requirement stems from a PSQCA standard, which the Commission has not established to be binding for the purposes of the law pursuant to which it was issued.
 - ii. NPL has stopped production and marketing of Dairy Rozana following its acquisition by FFBQL.
 - iii. NPL hereby undertakes to the Commission, not to engage in any deceptive marketing practices with respect to any of its products in future.

Issues

- a. Whether NPL has distributed false or misleading information lacking a reasonable basis, related to price, character, method or properties, suitability for use, or quality of the product in question in violation of Section 10(2)(b) of the Act?
- b. Whether NPL has distributed false or misleading information that is capable of harming the business interests of the competitors in violation of Section 10(2)(a) of the Act?

Analysis

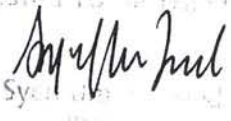
51. Before proceeding with the advertising and marketing practices of NPL, the Commission deems it necessary to address the issues raised by NPL's counsel in terms of the Commission's jurisdiction to impose the PSQCA standards, furnishing copy of the complaint, the principles of natural justice and opportunity of being heard as follows:

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Comptroller
General

- a. As noted above in paragraph 18, the Commission has quoted the above standards to differentiate between the two products i.e. dairy drink and standardized milk. It, however, has not assumed and/or intended to enforce the standards but to assess the veracity of claims made in advertising and marketing campaign of NPL and other Undertakings. The Commission's mandate is to assess whether the information disseminated by NPL through various means amount to dissemination of false or misleading information to consumer's and/or to competitor's detriment in violation of Section 10 of the Act.
- b. In regard to the Counsel's submission that they have not been provided with a copy of the complaint, it is stated that the concerns were raised *via* an email, upon which the Commission took a *suo motu* notice. NPL was clearly informed through the Commission's letter dated 26.11.2015 about the concerns and opportunity to respond was granted in accordance with the Regulation 14 to 17 of the CGER. Furthermore, after the conclusion of the Enquiry Report, NPL was notified to submit their contention in writing as well as to appear before the Commission and avail the opportunity of being heard. Hence, there has been no misapplication of the Competition Commission (Conduct of Business) Regulation 2007 and CGER. None of the regulations require the Commission to share the copy of email or complaint with the respondents. However, in practice, the Commission may share the complaint for respondent's comments where a formal complaint is filed under Section 37(2) of the Act. Thus the instant proceedings as mentioned in paragraph 7 above are based on the Commission's *suo motu* action.
- c. As regard the principles of natural justice, the Commission has provided a clarification in its Order of **Jamshoro Joint Venture Limited and LPG Association of Pakistan** dated 14.12.2009 (the "JV-LPG Order"), the relevant part of which is reproduced herein below:

"96. Natural Justice has been described as a concept, sadly lacking in precision (as per R v Local Government Board [1914] 1 K.B. 160 referred to by De Smith's treatise 'Judicial Review: 6th edition (2007) at para 6-010). The Supreme Court of Pakistan has also held that the rule of natural justice is not cast in a rigid mould and that depending on the facts and circumstances of each case, there is not a mandatory requirement of natural justice that in every case the other side must be given a notice before preliminary steps are taken. As per the Honourable Supreme Court, it might suffice if reasonable opportunity of hearing is granted to a person before an adverse action or decision is taken against him (Commissioner of Income Tax and others v Messrs Media Network and others: 2006 PTD 2502)" Support can also be gleaned from the following precedents from the United Kingdom and the United States."

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 Syed Aftab Ahmad
 Competitor
 Government
 Islamabad



52. A bare reading of the Act and regulations suggests that it is not mandatory on the Commission to share the concerns with the respondents, specifically, in cases where the Commission has decided to initiate a *suo motu* action. The Commission notes that in the procedure adopted by the enquiry officers, which is adequately reflected in the Enquiry Report, there has been no violation of the principles of natural justice.
53. The Commission now turns to the alleged violation of Section 10 by NPL during the marketing of Dairy Rozana, which essentially lacks the disclosure as to whether the product is dairy drink/liquid or milk. An image of Dairy Rozana package, which was available in the market and captured by the enquiry officers during the course of enquiry is reproduced herein below.



54. While addressing the question, whether a disclosure on the label cures deception in advertising, reference is made to the FTC judgment in the case of **American Home Products 98 FTC 136, 370 (1981)**, wherein it observed that ‘it depends on the circumstances...[nevertheless], it is well-settled that dishonest advertisement is not cured by honest labeling’ and vice-versa.
55. The Enquiry Report suggests that the last package available in the market does not contain the label ‘Dairy Drink’ to depict the true nature, properties, character and suitability for use of the product. This amounts to omission and non-disclosure of material information and is misleading whether it is ‘dairy drink’ or ‘milk’ can be inferred from the packaging. The FTC in its ‘Statement of Basis and Purpose for Cigarette Advertising and Labelling Trade Regulation Rules’ 1965 pp. 89-90 FR 8325 (1964) has observed that:

“The question whether in a particular case to require disclosure in advertising cannot be answered by application of any hard-and-fast rule principle. The test is simple and pragmatic: is it

likely that, unless such disclosure is made, a substantial body of consumers will be misled to their detriment?"

56. It is noted that Section 10 of the Act covers deceptive practices in terms of labeling and packaging of products. The term deceptive marketing practices has a far wider connotation as it includes written or oral representations or omission of material information in the advertising process.
57. The Commission is of the considered opinion that the shelving and display of products at point of sales is also a form of marketing and source of information dissemination to consumers related to the product's price, characteristics, method, or place of production, properties, suitability for use, or quality of goods. Whether explicitly or by implication the display at point of sale also fall within the category of marketing and/or advertising.
58. When information material as to the nature and characteristics of a product are inaccurate or incomplete, it is likely to mislead consumers under the circumstances, hence can constitute deceptive marketing practices in violation of Section 10(2)(b) read with Section 10(1) of the Act. NPL's failure to disclose and/or omission to label/represent Dairy Rosanna as 'Dairy Drink' is an affirmative misrepresentation as to the nature, characteristic and intended use of the product, which has the potential to create a false or misleading impression on consumers that the product is milk instead of a dairy drink or dairy liquid. Thus, the Commission holds that NPL's labeling and packaging practices constituted material misrepresentation by the omission of adequate information to the consumer's detriment, and hence a contravention of Section 10(2)(b) of the Act.
59. Section 10(2)(a) of the Act provides that 'distribution of false or misleading information that is capable of harming the business interests of another undertaking' constitute deceptive marketing practice for the purposes of Section 10(1) of the Act and is therefore prohibited. In the matter of M/s **DHL Pakistan (Private) Limited** dated 21.12.2012 (DHL Order), the Commission has observed that 'it is important to recognize that part of any business identity is goodwill, which it has established with consumer, while part of a product's identity is the reputation it has earned for quality and value'. With respect to harm to the interest of competitors, in the matter of M/s **Jotun Pakistan (Private) Limited** dated 17.03.2015 (Jotun Order), the Commission has observed that '[...] to prove conduct under Section 10(2)(a) of the Act, it is not necessary to show actual harm to competitors, it is sufficient to show the existence of a deceptive marketing practice that has potential to harm business interests of the competitors'.
60. In regard to, NPL acquisition by FFBQL, the undertaking in its letter to the Commission already had intimidated that 'on 26 May 2016,the Securities & Exchange Commission of Pakistan has approved the change in the name of the company from 'Noon Pakistan Limited' to 'Fauji Foods Limited' and the Registrar of the Companies has entered the new name on the Register in place of the former name by issuing the

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Competitor

Certificate of Incorporation on Change of Name on 01 June 2016. The legal formalities stand completed and now the Company shall be referred as 'Fauji Foods Limited (FFL).' Thus the Commission is of the considered opinion that post acquisition, all assets/liabilities of NPL are that of the FFL. Hence, the following determinations of the Commission are applicable to FFL unless it has otherwise been specified in the purchase contract of NPL by FFL.

61. Considering the entire mosaic of labeling and packing of Dairy Rozana and the general net impression of the product is that it is 'milk' instead of dairy drink or dairy liquid. The Commission finds that such omission is material in nature for consumers to make an informed decision. It has been held in the case of American Home Products, 98 F.T.C. (1981) that 'when the first contact between a seller and a buyer occurs through deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser. Hence, the representation and/or omission of material information in regard to labeling/packaging of Dairy Rozana by NPL (now FFL), until the discontinuation of the production and marketing were in violation of Section 10(2)(a) read with 10(1) of the Act.

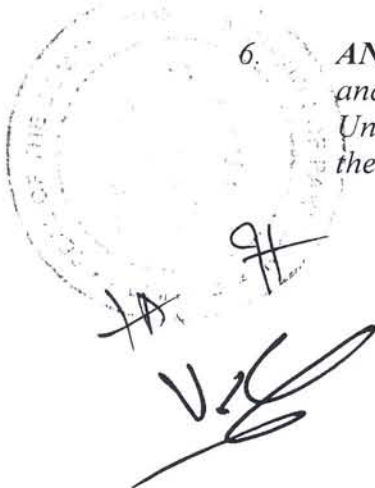
Shakarganj Food Pakistan Limited

62. According to paragraph 65 of the Enquiry Report, the front side of the packaging of SFPL's product 'Qudrat', it has been observed that the front side of the package does not mention the word 'milk' 'dairy drink' or 'liquid tea whitener'. However, one side of the package indicates the words 'UHT liquid tea whitener' in a very small font. In paragraph 65 of the Enquiry Report, it has been observed that in the absence of proper disclosure on the front side of the packaging it is not possible to understand the nature and purpose of the product. Moreover, the product also contains the picture of poured milk with a tea cup and dessert in a bowl which clearly indicates that the product can be used for multi purposes. Hence, the Undertaking was issued the SCN, the relevant part of which are reproduced herein below:

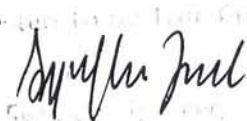
“4. **AND WHEREAS**, in terms of the Enquiry Report in general in paragraphs 33 to 46 in particular, Pakistan Standards and Quality Authority (PSQCA) and the Punjab Food Authority (PFA) have provided packaging and marketing standards for dairy products to follows;

5. **AND WHEREAS**, in term of the Enquiry Report in general and paragraph 56 in particular, the Undertaking is engaged in the production and sale of dairy drink 'Dairy Pure', and the liquid tea-whiteners 'Chaika' and 'Qudrat (the 'Products)';

6. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraph 64 to 69 in particular, it appears that the Undertaking's marketing claims regarding the Product give the impression that it is a milk and not a liquid tea whitener,



Attorney General
Competitive Pricing
General



which prima facie amounts to the distribution of false or misleading information to consumers, including the distribution of the information lacking a reasonable basis, related to price, character, method or place of production, properties, suitability for use, or quality of goods within the meaning and scope of Section 10(2)(b) of the Act, in violation of Section 10(1) of the Act;

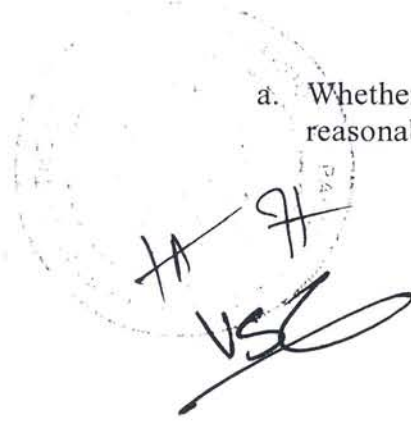
7. **AND WHEREAS**, in terms of the Enquiry Report in general and paragraphs 64 to 69 in particular, it appears that the Undertaking marketing claims regarding the Product are unsubstantiated and thus prima facie constitute false and misleading information that is capable of harming the business interest of another undertaking within the meaning and scope of Section 10(2)(a) of the Act. ”

Submissions

63. In its reply to the SCN dated 28.04.2016, SFPL submitted that the company is duly licensed by the PSQCA and is a responsible corporate citizen conforming to the highest standards of corporate governance and it has always endeavoured to conform to highest standards of management and food safety.
64. SFPL submitted that it has never and will never try to mislead consumers. The company’s marketing claims regarding the product do not give the impression that it is milk as the words “Liquid Tea Whiteners” are specifically printed on the packaging of the product and in neither TVC nor any other form of advertisement it was posed or marked as milk. Thus the company has never resorted to the distribution of false or misleading information in contravention of Section 10 of the Act.
65. After receiving the subject notice and in order to address the concerns of the Commission, package and label printing of the product “Qudrat” have been amended by the company, wherein, the words “Liquid Tea Whiteners” are conspicuously printed on the front of the pack.
66. Moreover, the product has always been marketed and sold by the company as UHT liquid tea whitener. Marketing claims of the company do not constitute a distribution of false or misleading information capable of harming consumers or the interests of competing undertakings. The Commission is therefore requested to take a lenient view in favour of the company and to dispose of the subject notice.

Issues

- a. Whether SFPL has distributed false or misleading information lacking reasonable basis, related to price, character, method or properties, suitability for



use, or quality of the product in question in violation of Section 10(2)(b) of the Act?

- b. Whether SFPL has distributed false or misleading information that is capable of harming the business interests of competitors in violation of Section 10(2)(a) of the Act?

Analysis

67. The packaging of the SFPL's liquid tea whitener is reproduced for reference purposes:



68. The front side of the packaging reflects the brand name 'Qudrat' with an addition of words 'Maza Beymesaal'. The front side of the pack does not indicate the words liquid tea whitener. However, one side of the packaging indicates the words 'UHT liquid tea whitener' in a very small font. The front side of the packaging doesn't indicate that it is a liquid tea whitener with the pictures reflecting the multipurpose use of the product.

69. It is also observed that in the absence of proper disclosure on the front side of the packaging it is not possible to understand the nature and purpose of the product. Moreover, the product also contains the picture of poured milk with a tea cup and dessert in a bowl which is likely to suggest that the product is considered as milk by an ordinary consumer in the circumstances. Hence the packaging of the product is capable of giving a wrong impression to the general public about the character, properties, suitability of use and quality of the product and can also give competitive advantage to the undertaking which is a violation of Section 10(1) in terms of Section 10(2)(a) & (b) of the Act.

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Page 25 of 29

Competitor's Name: _____
G. No. _____

Commitments

Engro Foods

70. On 3.11.2016, EFL filed a commitment before the Commission through its Chief Executive Officers duly empowered by the board of directors stating, *inter alia*, that it has removed the comparison with loose milk in its new advertisement/marketing material along with the tagline 'Qudrat sa Shafaf'. It further submitted that appropriate changes have been made in the website content. EFL further undertook that it would comply with all directions of the Commission.
71. The commitment given by EFL is accepted on the following conditions:
- a. That EFL shall ensure that all existing and future marketing materials, whether printed or in electronic form, relating to its Dairy Omung and any similar product will make no comparison of the same with milk (whether loose or branded) neither directly nor indirectly allude to this comparison; and
 - b. That EFL shall in all its current and future marketing materials, whether printed or in electronic form, relating to its Dairy Omung and any similar product communicate clearly and unambiguously that the product is a dairy drink and not milk, keeping in view the ordinary consumer test as is illustrated in the Commission's reasoning stated herein above.
 - c. That EFL shall ensure that existing and future packaging of its Dairy Omung and any similar will clearly and conspicuously carry the term 'Dairy Drink' in English and Urdu, at the very least, on the front and back of the packaging.
 - d. That EFL shall not display any pictorial illustration in its advertising or marketing material, including the packaging of Dairy Omung or any similar products that it is conceived as 'milk' by an ordinary consumer.
 - e. That EFL shall clearly and conspicuously print an express disclaimer that the product is Dairy Drink and not 'milk'.

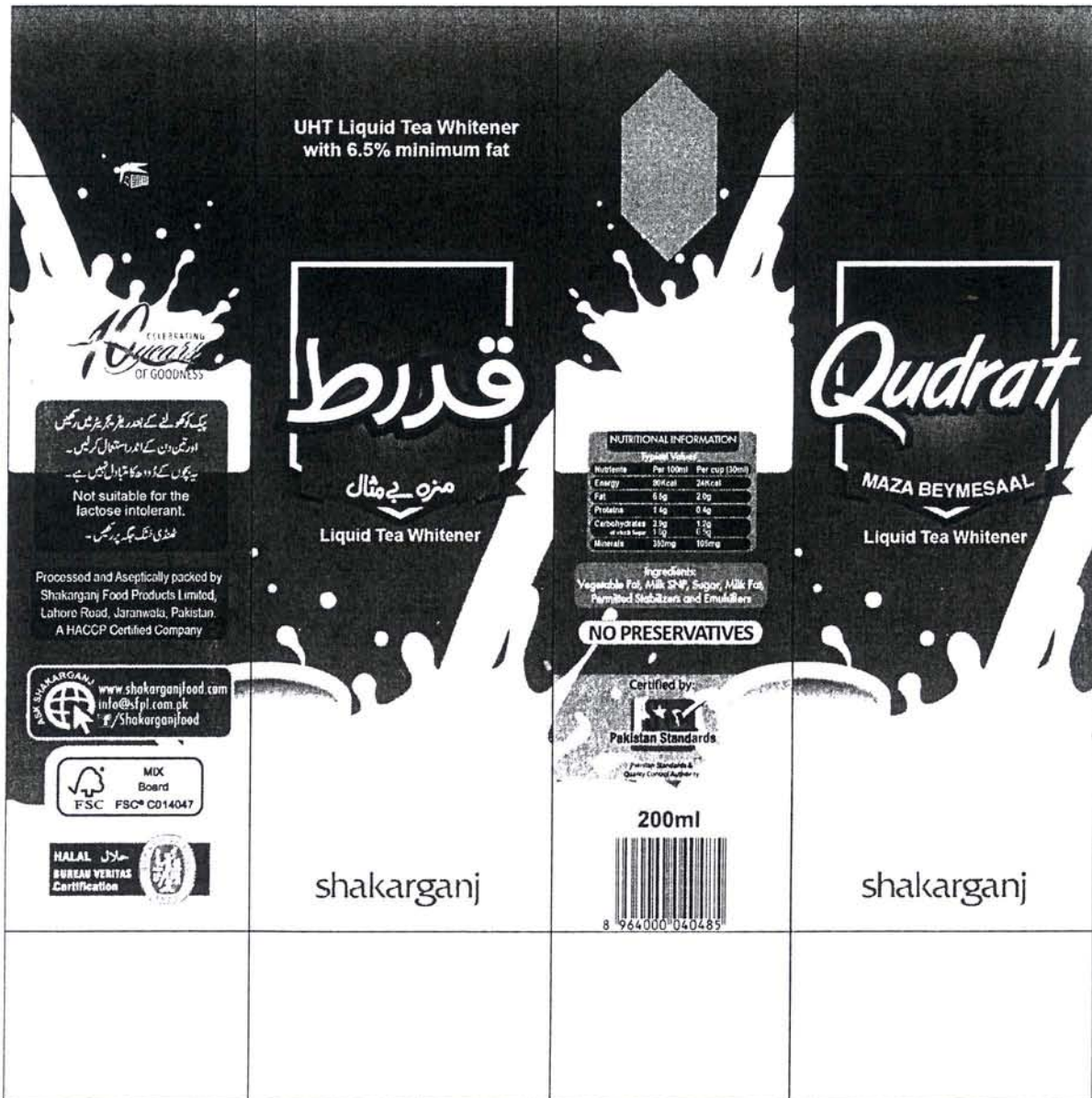
Shakarganj Foods

72. Soon after the enquiry commenced, SFPL submitted that it has stopped its marketing campaign under review and has also withdrawn all the materials regarding the marketing campaign under review from the public domain.
73. On 11-11-2016 SFPL filed a commitment before the Commission duly signed by Mr. Anjum Saleem, Director as authorized by SPFL board of directors. In terms of the

HA
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VSC

Attested by the Director
Anjum Saleem
Director
Competent Authority
Government of Punjab

commitment filed by SFPL on, the words 'liquid tea whitener' has already been clearly and conspicuously printed on the front of the new pack and the picture of the dessert has been removed. It further said that SFPL is ready to make further changes as indicated by the Commission. The new packaging is reproduced below.



74. The Commission accepts the commitment filed by SFPL on the following conditions:

- a. That SFPL shall ensure that all existing and future marketing materials, whether print or electronic, relating to its tea whiteners will make no comparison with milk nor directly or indirectly allude to this comparison; and

to H
VSC

Attested to be True Copy
Signature
Comptroller

- b. That SFPL shall, in all its current and future marketing materials, whether print or electronic, relating to its tea whiteners, clearly communicate, without any doubt or ambiguity, that the product is a dairy drink and not milk.
- c. That SFPL shall ensure that existing and future packaging of tea whiteners will clearly and conspicuously carry the term 'Tea Whiteners' in English and Urdu at the very least on the front and back of the packaging.

Remedies

75. As the Commission has accepted the commitments filed by EFL and SFPL subject to the conditions noted above, a lenient view is being adopted in terms of the penalty for violations of Section 10 of the Act. As a result:

- a. EFL is directed to pay an amount equal to 0.03% of its last turnover (accounting year 2015) for each of the four violations noted above, for a total of PKR 62,292,624/- (Pakistani Rupees Sixty Two Million Two Lac Ninety Two Thousand Six Hundred Twenty Four Only) as penalty.
- b. NLP (now FFL) is directed to pay PKR 2,000,000/- (Pakistani Rupees Two Million Only) as penalty.
- c. SFPL is directed to pay PKR 500,000/- (Pakistani Rupees Five Lac Only) as penalty.

76. The penalties have been imposed on each undertaking keeping in view the severity of the violation and its impact on competition and consumers in the market in general. EFL made the most serious of infraction amongst all Undertakings, specifically making substantial omissions, not disclosing that its product is a dairy drink and giving the impression that its dairy drink is a substitute of milk. The infractions are relatively serious since the deceptive marketing was not just through its product's packaging but also through a television commercial which reaches a wide audience. Therefore, its violations have attracted the highest penalty in relative terms, although nominally it still constitutes a very small percentage of its annual turnover. NPL had also omitted to fully disclose that its product was a dairy drink but its infractions were limited to its packaging. Moreover, NPL has ceased production of this product and hence the level of penalty imposed is relatively lower. Similarly, SFPL's deceptive practices are limited to its packaging only. Furthermore, SFPL is already partially disclosing that its product was a tea whitener on the sides and presented a changed packaging displaying tea whitener on all four sides and therefore it has, relatively, attracted the lowest penalty.

77. All three Undertakings are forewarned that any further violation in this regard and deviation from their commitments and the conditions laid out above may attract severe penalties under the Act.

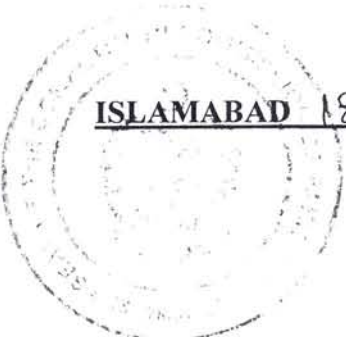
Director General
 Competition Commission of Pakistan
 Islamabad

78. EFL and SFPL are directed to file a compliance report with regards to their commitments and the conditions laid out by the Commission with the Registrar of the Commission within forty-five (45) days of this order.
79. The SCNs 16/2016, 18/2016 and 19/2016 are hereby disposed of.
80. Ordered accordingly.


Vadiyya Khalil
Chairperson


Shahzad Ansar
Member


Ikram Ul Haque Qureshi
Member


ISLAMABAD 18th January, 2017

Attended by

19/1/17
Saved
Copy of the order shall be
sent to the
concerned.