



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO
M/S RECKITT BENCKISER PAKISTAN LIMITED
FOR DECEPTIVE MARKETING PRACTICES

(FILE No.145/OFT/DETTOL/CCP/2013)

Dates of Hearing

09 June 2015
26 March 2015
20 December 2013

Adjudicating Members

Ms. Vadiyya Khalil
Chairperson

Mr. Mueen Batlay
Member

Dr. Shahzad Ansar
Member

Mr. Ikram Ul Haque Qureshi
Member

On behalf of M/s Reckitt Benckiser Pakistan
Limited

Mr. Mehmood Mandviwalla
Mr. Hassan Manviwalla
Ms. Wajiha Zahid Khawaja
Advocates High Court
**Mandviwala & Zafar- Advocates & Legal
Consultants**

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Syed Umar Javed

Registrar
Competition Commission of Pakistan
Government of Pakistan
Islamabad.



Mr. Muna Farid, (*Regional Legal Director*)
Mr. Burhan Khan, (*Director Marketing*)
Mr. M. Zaki Khan, (*Manager R&D*)



ORDER

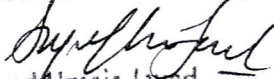
1. This order shall dispose of the proceedings initiated pursuant to show cause notice No.21/2013 dated 11 November 2013 (the "SCN"). The SCN was issued pursuant to an enquiry carried out by the Competition Commission of Pakistan (the "Commission") into allegations of violations of Section 10 of the Competition Act, 2010 (the "Act").
2. The main issue under consideration in this matter is whether M/s Reckitt Benckiser Pakistan Limited (the "Respondent") has been engaged in deceptive marketing practices in violation of Section 10 (1), read with Section 10 (2) (a), (b) and (c) of the Act.

FACTUAL BACKGROUND

3. The Respondent is a company registered under the Companies Ordinance, 1984 and is principally engaged in the manufacturing and marketing of consumer household, antiseptic, and pharmaceutical products.
4. The Commission took notice of a televised marketing campaign ('TVC') launched by the Respondent and the packaging for the product "*Dettol Surface Cleaner*", (the "Product") which is used to sanitize and clean surfaces and floors. This campaign was aired on multiple television channels.
5. The Respondent has made the following representations regarding the Product:

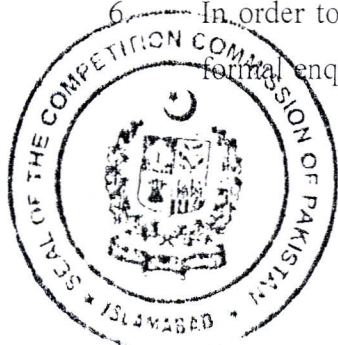
- a. '*Phenyl is highly ineffective against germs*';
- b. '*Only Dettol Surface Cleaner can kill more germs than Phenyl*';
- c. '*Only Dettol Surface Cleaner can kill 99.9% of germs*'; and
- d. '*Dettol Surface Cleaner can kill germs 10 times more than Phenyl*'.

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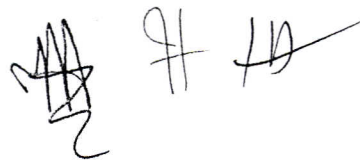

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6. In order to verify the claims made in the TVC as well as on the Product packaging, a formal enquiry in terms of Section 37 (1) of the Act was initiated, which was concluded

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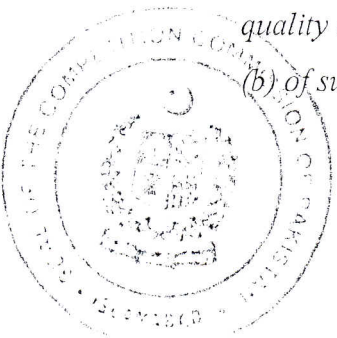


vide an enquiry report dated 04 October 2014, (the 'Enquiry Report'). Based on the *prima facie* findings of the Enquiry Report, a SCN was issued to the Respondent, wherein it was required to respond in writing within fourteen (14) days as well as to appear before the Commission on 2014. The relevant portions of the SCN are reproduced below:

8. *WHEREAS, in terms of Enquiry Report in general and in particular Paragraphs (24) to (44), it appears that the Undertaking through its advertisement is disseminating information to the consumers that their product i.e. Dettol Surface Cleaner is more effective than Phenyl through claim 'Phenyl is highly ineffective against germs', which is not substantiated with any report/evidence and appears to be false/ misleading and is, prima facie, capable of harming the business interest of undertakings engaged in manufacturing and selling of Phenyl related products in violation of Section 10 and in particular clause (a) of subsection (2) of Section 10 of the Act;*

9. *WHEREAS, in terms of Enquiry Report in general and in particular paragraphs (24) to (44), the undertaking is making efficacy claims of its Product through advertisement i.e. 'Only Dettol Surface Cleaner can kill more germs than Phenyl', 'Only Dettol Surface Cleaner can kill more germs than phenyl' and 'Only Dettol Surface Cleaner can kill 99.9% of germs'. However, no report/ evidence/ study has been submitted by the undertaking to substantiate the aforesaid claims, hence, the undertaking by making the aforesaid claims in the advertisement is prima facie disseminating false/misleading information to the consumers regarding Dettol Surface Cleaner that is lacking a reasonable basis, related to character, properties, suitability for use, or quality of goods in violation of Section 10 and in particular clause (b) of subsection (2) of Section 10 of the Act;*

Seyal Chaudhry



VSE

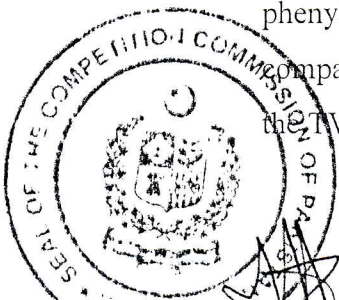
MMA

H/A

10. WHEREAS, in terms of Enquiry Report in general and in particular paragraphs (24) to (44) & (45) to (47), it appears that the undertaking in comparing its product i.e. Dettol Surface Cleaner with ordinary unbranded phenyl, however, in the advertisement only the word 'Phenyl' is used and no comprehensive study/ report/ evidence is provided to substantiate the said claim, which prima facie gives a false/ misleading comparison of Dettol Surface Cleaner with Phenyl (whether branded or unbranded) in violation of Section 10 of the Act in particular cause (c) of subsection (2) of Section 10 of the Act;

SUBMISSIONS

7. The Respondent filed its written replies, and made further submissions during the course of the hearings before the Commission, a combined summary of which is as follows:
- a. It was submitted that the TVC ran between February and September 2013, and had been off the air prior to the SCN being issued by the Commission;
 - b. It was submitted that the statements made in the TVC had a reasonable basis and were substantiated with a comparative efficacy report dated 28 January, 2013 which was conducted by Reckitt Benckiser Microbiology Laboratories;
 - c. With regards to the claim of Phenyl being ineffective against germs, the Respondent submitted that compared to the Product, ordinary unbranded phenyl is less effective, which comparison is supported by results of comparative efficacy tests and this has been clearly stated in a disclaimer to the TVC;



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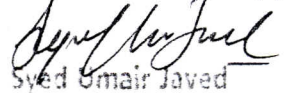
- d. A reasonable basis does exist for the claims made in the TVC. The claims are accompanied by a disclaimer stating that they are made only against ‘*ordinary unbranded Phenyl*’ which is supported by results of comparative efficacy tests dated 28 January, 2013.
- e. It was submitted that the Respondent did not have the intention of implying that many other surface cleaners were tested and ‘*only*’ the Product could kill more germs than Phenyl.
- f. With respect to the efficacy of the Product, it was submitted that ‘*Kills 99.9% of Germs*’ is a long standing global claim for the Respondents, and has been tested and accepted by various global regulatory bodies. Furthermore, the Product has been tested according to the European testing standard ‘*EN 1276*’ in the spirit of integrity and diligence, whereas it could have been tested against the less stringent testing standard ‘*SANS 639-2001*’, which is applicable in South Africa, as a basis for making the claim.
- g. It was denied that the intention of the two statements ‘*Only Dettol Surface Cleaner can Kill 99.9% of germs*’ and ‘*Dettol Surface Cleaner can kill germs 10 times more than phenyl*’ was to claim that phenyl can only kill 9.99% of germs. It was submitted that the two claims stand alone from each other and cannot be read in conjunction.

ISSUES

8. The issues identified are therefore as follows:

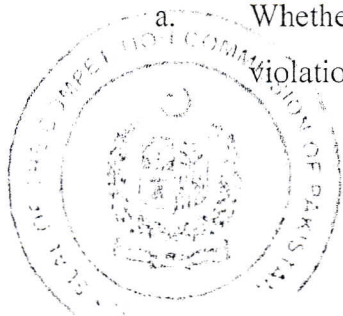
- a. Whether the claim ‘*Phenyl is highly ineffective against germs*’ constitutes a violation of Section 10 (2) (a) of the Act;

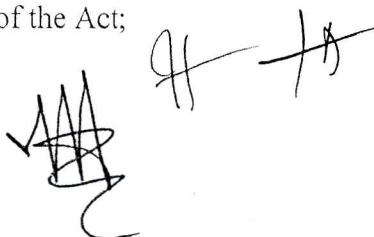
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- b. Whether the claims (i) 'Only Dettol Surface Cleaner can kill more germs than Phenyl', (ii) 'Only Dettol Surface Cleaner can kill more germs than phenyl' and (iii) 'Only Dettol Surface Cleaner can kill 99.9% of germs' constitute a violation of Section 10 (2) (b) of the Act;
- c. Whether the use of the word 'Phenyl' in the different claims constitutes a violation of Section 10 (2) (c) of the Act.

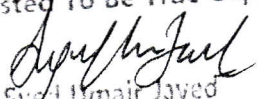
ANALYSIS

9. Section 10 of the Act delineates the prohibition against deceptive marketing practices, and as such encompasses the protection of both consumer and competition interests. With respect to the matter at hand, we will discuss each alleged violation in light of the relevant sub-section.

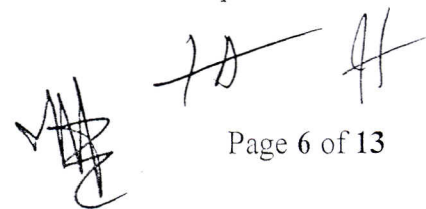
Section 10 (2) (a)

10. Sub-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 a deceptive marketing practice for the purposes of Section 10(1) of the Act and is therefore prohibited. For a violation under this sub-section to be actionable both elements must be present.
11. In its Order In The Matter Of Complaint Filed By M/S. Dhl Pakistan (Pvt.) Ltd.('DHL Order') it was stated that '*it is important to recognize that part of any business' identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value*'. In its Order In The Matter Of Show Cause Notice Issued To M.S Jotun Pakistan (Pvt) Limited For Deceptive Marketing Practices, the Commission held that '*To prove conduct under Section 10(2) (a) of the Act, it is not necessary to show actual harm to competitors. It is*



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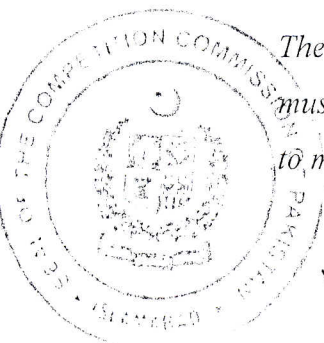
sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interests of the competitors’.

12. With regards to the claim that ‘Phenyl is highly ineffective against Germs’, the Respondent has submitted that the statement was supported by the results of the Disinfectant Efficacy Study dated 28 January 2013 (the ‘Study’) which compared the efficacy of the Product with that of ordinary non-branded phenyls.
13. Since the basis of the Study is to show comparative efficacy between the Product and Phenyls, we find that it does not in any way substantiate the claim that 'Phenyl is highly ineffective against germs'. The Respondent has not relied upon competent and reliable evidence to make it, and as such the claim may be understood to be dissemination of misleading information. By using the term ‘phenyl’ the Respondent’s claim has the potential of harming the business interests of all producers of phenyl, whether branded or unbranded. We therefore find this claim to constitute a violation of Section 10(1) in terms of Section 10(2) (a).

Section 10 (2) (b)

14. Section 10 (2) (b) of the Act provides that ‘*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, suitability for use, or quality of goods*’ constitutes a deceptive marketing practice, use of which amounts to a violation of Section 10(1) of the Act.
15. It is appropriate to mention here that regarding the ‘reasonable basis’ for making any claim in the advertisement, the Commission has in its order in **In The Matter Of Procter And Gamble** observed that:

The concept of having a reasonable basis ... provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement.



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16. We will now discuss the individual claims made by the Respondent in this regard.

A. 'Only Dettol Surface Cleaner can kill more germs than Phenyl'

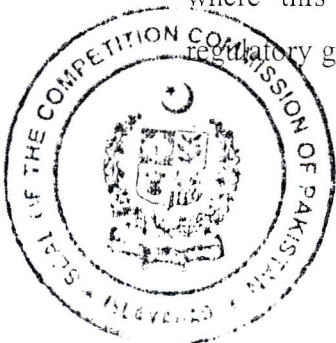
17. The statement above is used during the voice-over in the TVC. According to the submissions made by the Respondent, the Study provides a reasonable basis for this claim. It was also submitted that the claim is accompanied by a disclaimer stating that it is being made only against 'ordinary unbranded phenyl'. Finally, the Respondent also submitted that the word 'only' was used 'for the avoidance of doubt, to refer to specifically the two products that were being tested.

18. We find it pertinent to mention here that no studies testing the efficacy of surface cleaners other than the Product have been provided, or relied upon by the Respondent. In the absence of a comparison of phenyl with other surface cleaners available in the market, it is not appropriate to say that 'only' the Product can kill germs more than Phenyl. We are unable to accept the submissions of the Respondent in this regard and find the claim to constitute a violation of Section 10(1) in terms of Section 10(2) (b).

B. 'Kills 99.9% of germs'

19. With regards to the claim 'Kills 99.9% of Germs', it must first be clarified that the same was incorrectly reproduced as 'Only Dettol Surface Cleaner can Kill 99.9% of Germs' in the SCN. The correct claim, as appears on the Product packaging is used in the Enquiry Report.

20. The Respondent submitted that this is a long standing claim regarding the Product, which has been tested and accepted by various global regulatory bodies worldwide. In all cases where this claim is used, standard international protocols, and if available, local regulatory guidelines, are followed in order to substantiate the above claim.



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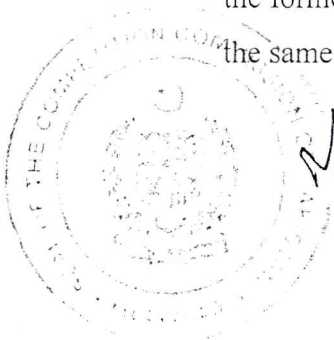
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VSC

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21. It was further submitted that the Product has been tested in South Africa according to the 'SANS 639-2001' standard (the 'SABS Report'), and also in accordance with the more stringent testing standard, 'EN 1276' (the 'Study'), which is applicable across the European Union. Reports of both tests were provided to the Commission.
22. The terms 'germs' under a common definition include bacteria, viruses and fungi. According to the SABS Report submitted by the Respondent, the Product has been tested against three species of bacteria, i.e. 'Pseudomonas Aeruginosa', 'Escherichia Coli', and 'Staphylococcus Aureus', and against four species of bacteria according to the Study.
23. While it is evident that the Product has tested successfully against four types of bacteria, there is no evidence that it has been tested against viruses and fungi, and to use the term 'germs' therefore becomes blatantly misleading.
24. It is pertinent also to mention here that the more stringent standard used, i.e. 'EN 1276' is specifically for bactericidal activity testing and as such is not an all encompassing standard against which surface cleaners may be measured.
25. We must also point out that similar products by the Respondent have been packaged with the claim 'Kills 99.9% of Bacteria and Viruses- Kills E.Coli, Salmonella, MRSA and the Flu Virus' in the United Kingdom. The Respondent may therefore considered to be aware of the concerns that may arise with respect to its packaging and marketing methods, and has yet chosen to follow the less rigorous approach.
26. Moreover, laboratory conditions are appreciably different from those found in common households, and special steps are required to achieve 99.9% efficacy against bacteria in a normal, everyday settings where cleaning takes place. Short of these steps - like letting a particular quantity of undiluted Product stand in contact on the surface for a specific duration of time - achieving a 99.9% efficacy against selected bacteria is not possible. This is not made clear to the consumers either on the packaging or in the TVC, leading the former to reasonably believe that any sort of cleaning with the Product would achieve the same result.



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27. In light of the above, we are inclined to find that the claim '*Kills 99.9% of Germs*' constitutes a violation of Section 10(1) in terms of Section 10(2) (b).

C. '*Dettol Surface Cleaner can kill germs 10 times more than Phenyl*'

28. This claim is also made through the voice-over in the TVC. At the outset, the objections as raised above with regards to the use of the term '*germs*' remain valid for this claim also. Furthermore, it is noted that the Respondent has relied on the Study which was carried out to compare the efficacy of the Product against ordinary unbranded phenyl, which fact was not included in the TVC at the time of issuance of the SCN.

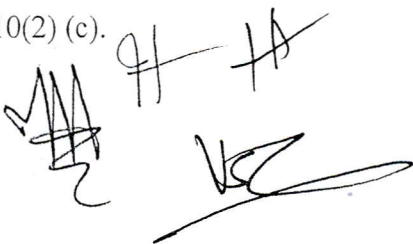
29. Without the requisite disclaimers in place, the claim constitutes a violation of Section 10(1) in terms of Section 10(2) (b).

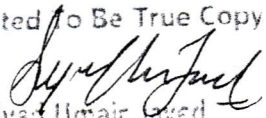
Section 10 (2) (c)

30. Sub-section 10(2) (c) prohibits the '*false or misleading comparison of goods in the process of advertising*' and also constitutes a deceptive marketing practice in terms of Section 10(1) of the Act. Similarly to the preceding sub-sections, a comparison of goods made without reasonable basis will be considered to be false and misleading in terms of this provision. A comparison is made whenever the qualities of two or more products or services are judged against each other.

31. The Respondent's use of the term '*Phenyl*' in three of the claims as discussed above is both false and misleading, as according to the Respondent's own submissions, the only material relied upon by it to make the claims has used ordinary unbranded phenyl for comparative testing purposes.

32. It is reiterated therefore that the Respondent has not relied on any substantiable evidence to make its claims, which renders them in violation of Section 10 (1) in terms of Section 10(2) (c).

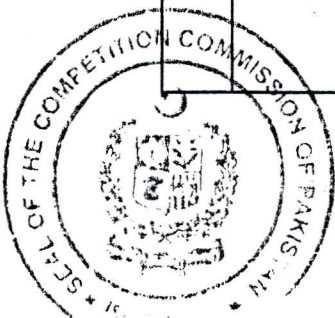


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COMMITMENTS

33. Throughout the course of investigation and hearings, the Commission has found the Respondent to be accommodating of its enquiries and suggestions. A number of commitments were made by the Respondent in this spirit during the course of hearings, as are listed below:

	Claim	Commitment
a.	<i>Phenyl Is Highly Ineffective Against Germs'</i>	To be removed from the TVC altogether.
b.	<i>Only Dettol Surface Cleaners Can Kill Germs More Than Phenyl</i>	The word 'only' will be removed from before Dettol Surface Cleaners.
c.	<i>Dettol Surface Cleaner Can Kill Germs 10 Times More Than Phenyl</i>	The term 'phenyl' will be replaced by 'ordinary non-branded phenyl', which disclaimer will be made more easily visible also.
d.	<i>Kills 99.9% of germs</i>	The claim will not itself be amended but the names of the bacteria the Product has been tested against will be added to the packaging. Finally, the word 'extra' used in the instructions on the back label of the packaging of the Product will also be removed as the Product was proven to be effective against 99.9% of tested bacteria after 5 (five) minutes of contact with the surface.



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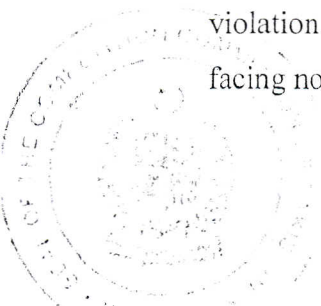
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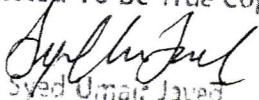
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REMEDIES & PENALTY

34. The Commission finds the Respondent's commitments to be satisfactory in the case of claims 'a', 'b' and 'c' in the table above.
35. With regards to claim 'd' i.e. '*Kills 99.9% of Germs*', we find the commitments made to be satisfactory to the extent of clarifying the use of the term 'germs'. However the directions for use to be followed in order to achieve 99.9% efficacy against tested bacteria remain unclear for the end user as discussed in paragraphs 19-27 above. The Respondent is therefore hereby directed to either :
- a. State clearly the conditions required for the Product to achieve 99.9% efficacy against bacteria on the Products packaging and all its marketing materials; or
 - b. Change the claim to include the word '*upto*' between '*kills*' and '*99.9%*'.
36. The Respondent is hereby given thirty (30) days for compliance in this regard. The Respondent is directed to submit a compliance report with the Registrar of the Commission within the stated time period. At the end of this time period, the Registrar shall inform the Commission of the status of the Respondent's compliance.
37. In view of the commitments made by the Respondent to remedy most of the violating claims itself, the Commission is taking an extremely lenient view and imposing a token penalty of only PKR 250,000 for each of the five violations mentioned above for a total of PKR 1,250,000.
38. If the Respondent, however, fails to amend its claim relating to '*Kills 99.9% of Germs*' in accordance with the direction laid out in paragraphs 35 and 36 above within the stipulated time period, it will be liable to pay PKR 5 Million instead of PKR 250,000 for the violation relating to its claim of '*Kills 99.9% of Germs*', in addition to the possibility of facing non-compliance proceedings and penalties in accordance with the Act.



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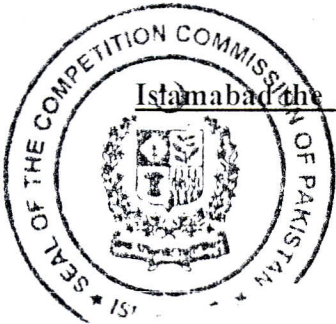


39. It would be pertinent to mention that these commitments and conditions will apply to all the existing and future marketing campaigns done by the Respondent. The Respondent is reminded that indulging in deceptive marketing practices in the future may entail stricter penal consequences.

40. In terms of the above, SCN No. 21/2013 is hereby disposed of.

41. Ordered accordingly.

Vadiyya Khalil *Dr. Shahzad Ansar* *Mr. Mueen Baflay* *Mr. Ikram Ul Haque Qureshi*
Ms. Vadiyya Khalil Dr. Shahzad Ansar Mr. Mueen Baflay Mr. Ikram Ul Haque Qureshi
Chairperson Member Member Member



Islamabad the 11th August, 2015

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Registrar
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