



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN
IN THE MATTER OF**

SHOW CAUSE NOTICES ISSUED TO

**ENGINEERING UNIVERSITIES FOR DECEPTIVE
MARKETING PRACTICES**

(F. NO: 84/REG/OFT/ENGINST/CCP/2012)

Dates of hearing: July 20 & 27, 2012
August 1, 2, 7, 8, 13, 28 & 29, 2012

Present: Ms. Rahat Kaunain Hassan
Chairperson

Mr. Abdul Ghaffar
Member

Dr. Shahzad Ansar
Member

On behalf of:

Pakistan Engineering Council (PEC)	Mr. Muhammad Nasir, Registrar Mr. Osaf Malik, Deputy Registrar (Accr)
M/s. Abasyn University	S. Inayat Hussain, Registrar M. Iqbal, Advisor S. Shujat Shah
M/s. Bahira University	Mr. Shafiq-ur-Rehmand Dab, Advocate High Court
M/s. Balochistan University of Engineering & Technology	Dr. Zahoor Ahmed, Dean Faculty of Eng
M/s. CECOS University	Prof Dr. Azzam ul Asar, Dean Faculty of Eng
M/s. Center of Advanced Studies in Eng (CASE)	Dr. Abdul Khaliq, President Dr. Saeed ur Rehman
M/s. Foundation University	Mr. Anwar Jamal Ansari, Senior Associate Academics Lt. Col (Rtd) M. Alam, Deputy Registrar Mr. Abid Aziz Malik, Advocate

M/s. Hamdard University	Mr. Kashif Hanif Advocate Prof Dr. Abdul Rehman Memon Prof Dr. Wali uddin, Director HIITE
M/s. Institute of Business Management (IBM)	Mr. Kashif Hanif Advocate
M/s. Institute of Industrial Electronics Engineering	Mr. Ameer Hamza, Senior Instructor
M/s. Iqra University	Dr. U. A. Isani, VC Dr. Shah Nawaz Memon, Advocate
M/s. Isra University	Mr. Abdul Qadir Memon, Advisor to VC
M/s. Karachi Institute of Economics & Technology	Mr. Kashif Hanif Advocate Dr. Irfan Hyder Mr. Iqbal Khan, Associate Profession
M/s. National University of Computer Engineering & Sciences (FAST NU)	Dr. Muhammad Latif Virk, Registrar
M/s Sir Syed University of Engineering & Technology	Mr. Kashif Hanif Advocate
M/s. NFC Institute of Engineering & Technology	Prof Dr. Tahir Imran Qureshi
M/s. Sarhad University of Science & Technology	Eng Prof Dr. M. A. Baseer Engr. Prof. Dr. Salim ur Rehman, VC
M/s. Synthetic Fiber Development & Application Center	Mr. Ar Fakih, GM SFDAC Ch. Ramzan Ali, Deputy Secretary, Ministry of Industry, Islamabad
M/s. Sukkur Institute of Business Administration	Mr. Zahid Hussain, Registrar Syed Madad Ali Shah
M/s. Sweedish College of Engineering & Technology	M. Saleem Sadozai, Principal
M/s. Usman Institute of Technology	Mr. Kashif Hanif Advocate Mr. Roshan Zameer, Director (Academics)
M/s. University of Lahore	Brig (Rtd) M Ajaib, Member Board of Governors
M/s. University of Central Punjab	Mr. Waqqas Mir, Advocate Dr. Tabreez A. Shami, Dean Eng
M/s. University of Management Technology	Mr. Abdul Ghaffar, Acting Registrar Mr. Asad Manzoor Butt, ASC
M/s. University of Faisalabad	Maj. Izhar ul Ahsan (Rtd) Registrar/Director Administration
M/s. University of South Asia	Prof Dr. Farid A. Khwaja, Pro VC
M/s. Wah Engineering College	Prof. Aziz ur Rehman, Registrar
M/s. Ziauddin University	Prof M. Iqbal Bhatti, Principal Muhammad Yousaf, Registrar Mr. Asim Mansoor, Advocate

ORDER

1. This Order shall dispose of the proceedings arising out of Show Cause Notices No. 78/2012 to 104/2012 (hereinafter collectively referred to as the “**Show Cause Notices**”) issued to twenty seven (27) universities offering engineering degrees/courses namely: Baluchistan University of Engineering & Technology (“**BUET**”), NFC Institute of Engineering & Technology Training, Multan (“**NFC**”), Institute of Industrial Electronics Engineering (“**IIEE**”), Hamdard University (“**Hamdard**”), Center for Advanced Studies in Engineering (“**CASE**”), CECOS University (“**CECOS**”), Foundation University (“**Foundation**”), Synthetic Fiber Development and Application Centre College of Textile Engineering (“**SFDAC**”), The University of Faisalabad (“**UOF**”), University of South Asia (“**USA**”), Wah Engineering College (“**Wah**”), Sarhad University of Science and Information Technology, Peshawar (“**Sarhad**”), Bahria University (“**Bahria**”), Iqra University (“**Iqra**”), University of Management and Technology (“**UMT**”), Isra University (“**Isra**”), Ziauddin University (“**Ziauddin**”), Sukkur Institute of Business Administration (“**IBA Sukkur**”), University of Central Punjab (“**UCP**”), Institute of Business Management (“**IBM**”), Sir Syed University of Engineering and Technology (“**Sir Syed**”), Pakistan Airforce- Karachi Institute of Economics and Technology (“**PAF-KIET**”), Usman Institute of Technology (“**UIT**”), Abasyn University (“**Abasyn**”), The University of Lahore (“**UOL**”): National University of Computer & Emerging Sciences (“**FAST**”), Swedish College of Engineering and Technology (“**Swedish**”). The above named institutions are hereinafter collectively referred to as (the “**Undertakings**”) and have been issued Show Cause Notices for *prima facie* violation of Section 10 of the Competition Act, 2010 (the “**Act**”) for engaging in deceptive marketing practices.

FACTUAL BACKGROUND

2. The Competition Commission of Pakistan (the ‘**Commission**’) received a letter from Mr. Firdous Ayub wherein attention was drawn towards the practice of institutions offering engineering degrees/courses without being duly accredited by the Pakistan Engineering Council (“**PEC**”). The Commission took notice of this practice by institutions offering engineering degrees/courses and on its own initiated a formal enquiry under sub-section (1) of Section 37 of the Act.

3. The enquiry was to verify any *prima facie* violations of Section 10 of the Act, in respect of deceptive marketing practices by the engineering institutions offering engineering degrees/courses for the year 2011. The enquiry was therefore, primarily based on review of advertisements for the period of June to October 2011 in print and electronic media by such institutions. In this regard various meetings were also held with PEC whereby it was verified as per the conclusion of the Enquiry Report dated 18-06-2012 (the “**Enquiry Report**”) that according to the provisions of the Pakistan Engineering Council Act, 1976 (the “**PEC Act**”) only those institutions, within or outside Pakistan, that have been listed in the First or Second Schedule of the PEC Act, updated from time to time, will be regarded as “accredited engineering institutes or qualifications”. The Enquiry Report found that although the Undertakings in the advertisements were claiming to have been accredited/ approved/ permitted/ allowed/ recognized by PEC, none of them had been listed in the First or Second Schedule of the PEC Act as institutions offering accredited programs for intake of students in the year 2011.

4. On the recommendation of the Enquiry Report, Show Cause Notices were issued to each of the Undertakings for, *prima facie*, violation of Section 10 (1) and Section 10 (2) (a) and (b) of the Act. The relevant parts of the Show Cause Notice are reproduced below:

- “9. *WHEREAS, in terms of the Enquiry Report in general and paragraph 6 in particular, the Advertisement, prima facie, gives an impression that the course of ... offered by the Undertaking has been accredited by PEC. However, it appears that the actual facts are in contrast to what has been disseminated to the consumers through the Advertisement; as the Undertaking has not been granted accreditation by PEC for intake of ... which constitutes a, prima facie, violation of Section 10 (1) of the Act;*
10. *WHEREAS, the Undertaking has, prima facie, disseminated false and misleading information to consumers regarding its accreditation, lacking reasonable basis relating to the character and suitability of the degrees/courses offered and quality of education provided, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act;*
11. *WHEREAS, it appears that the information disseminated by the Undertaking through its Advertisement is, prima facie, capable of harming the business interests of the competing undertakings, who actually possess the accreditation of PEC, which constitutes a, prima facie, violation of clause (a) of sub-section (2) of Section 10;”*

SUBMISSIONS AND HEARINGS

5. The Undertakings were called upon to show cause in writing within fourteen days of the date of the Show Cause Notice and to appear in person before the Commission to avail opportunity of being heard through a duly authorized representative on 17-07-2012, which was rescheduled to 20-07-2012. The Undertakings that had requested an adjournment were granted an adjournment of two (2) weeks provided no further time would be granted. Due to large number of Undertakings, it was decided in the first hearing that subsequent hearings will be

scheduled in a manner that three to four institutions be given the opportunity of presenting their case on the scheduled day of hearing. However, three institutions were allowed to present their case on the same day. Subsequent hearings were held on 27-07-2012, 01-08-2012, 02-08-2012, 07-08-2012, 08-08-2012, 13-08-2012, 28-08-12 and 29-08-12. The Undertakings through their written replies and in the hearings made the following submissions:

(1) **Balochistan University of Engineering & Technology:**

BUET in its reply received on 10-07-12 has submitted that all advertised engineering programs have been approved by PEC and has been granted accreditation for intake of batch of 2007. None of the advertised programs have been denied accreditation by PEC to date. BUET submitted that as per previous practice, applications are invited by students who are granted admission and after 2-3 years of a particular batch the PEC team visits the university to inspect the batch and grants accreditation. BUET stated that it is aware that PEC only grants accreditation as per program and not to the university as a whole but due to misunderstanding, the statement has been added and regrets its mistake. BUET assured that there is no malafide intent on its part and that no such mistake will be made in the future. The total fee for each student for an engineering program is Rs. 40,200/- as per BUET's submissions. Furthermore, BUET through its authorized representative submitted in the hearing that they will amend the advertisements in compliance with the Commissions directions.

(2) **NFC Institute of Engineering & Technology Training Multan:**

NFC in its reply has raised certain issues regarding the Show Cause Notice issued to them. NFC submitted that as the letter received by Mr. Firdous Ayub raised concerns about Hajvery University that is not listed in the First Schedule of the PEC Act, therefore, it cannot be compared to institutions like NFC that have been listed in the First Schedule. An issue was also raised regarding educational services not falling under the definition of commercial and economic undertaking, as NFC runs on non-profitable basis and does not compete with other institutions operating for profit generation. NFC submitted that the enquiry committee has not understood the accreditation process, which is a continuous process and accreditation for the batch graduating in 2011 cannot be obtained before they reach the 2nd or 3rd year of the engineering degree. NFC stated that the Power Engineering Program is a new program and PEC has granted permission to launch this program. In respect of the remaining advertised programs, it submitted that all the batches that have passed out are accredited

and re-accreditation for subsequent batches is in process. Total fee for each student as per NFC's submissions is Rs. 400,000/- for a four year program. NFC stated that it would amend the advertisements in compliance with the Commissions directions.

(3) **Institute of Industrial Electronics Engineering:**

IIEE in its reply submitted that PEC has been granting accreditation on yearly basis to IIEE graduates. The last accreditation was for the batch 2006-2007 which passed out in 2010, thus accreditation was valid till 2010 and not 2006. IIEE has been fulfilling the minimum standards of PEC from 1989 and a request has been sent to the PEC for grant of accreditation to IIEE batches inducted in 2008 and later through letter dated 29-06-2012. IIEE submitted that total fee for a 4 year program is Rs. 250,000/- per student. It made a commitment in the hearing to comply with the directions of the Commission.

(4) **Hamdard University:**

Hamdard stated that it was not an 'undertaking' for the purpose of the Act and that consumers and students are distinct entities, therefore, students cannot be deemed to be consumers for the purpose of the Act. In the hearing the authorized representative of Hamdard submitted that the provisions of the Act are not applicable on Hamdard as it is not performing any commercial activity but rather exercising a function of the state. Hamdard submitted that it was a non-profit organization being run under a trust fund. It was stated that the Act is basically an anti-cartel law and deals with commercial and economic activity. Furthermore, as per Hamdard's submissions PEC is the competent oversight and regulatory body for an engineering institution and unless PEC issues a policy statement there was no logic to pursue the case. It also raised concerns about Hamdard not being included at the enquiry stage. Section 15 of the PEC Act was highlighted which deals with de-accreditation and as per Hamdard's submission accreditation was a valuable right which was only negated by de-accreditation under Section 15 of the PEC Act. In respect of the advertised programs, it stated that the zero visit for BE Biomedical Engineering has been conducted and interim visit for BE Energy Engineering has also been conducted. Hamdard did not intend to deceive anyone, and they had modified the offending portion of the advertisement, regardless of the fact that PEC had not to date given any guidance on the matter. Without conceding to the jurisdiction of the Act, Hamdard would change the advertisement.

(5) **Center for Advanced Studies in Engineering (CASE):**

CASE in its reply stated that the definition of accredited program used by PEC is the only valid definition and the Enquiry Report employs as incorrect standard and interpreting the accreditation status of BSc Electrical Engineering program of CASE. It submitted that only PEC permission is required for offering and engineering program/degree for the first time and not accreditation as stated in the Show Cause Notice. Further, it was submitted that program accreditation is linked to quality of graduates and these are identified according to their intake year and not the graduation year. As BSC Electrical Engineering Program at CASE has been accredited since 2008 and received a 3 year re-accreditation from PEC in 2009, the accreditation status is current. CASE raised concerns about the Show Cause Notice being discriminatory as they had not been issued to universities that have not mentioned their accreditation status, although none of them have been accredited for intake of batch in 2011. The omission not to disclose accreditation status also constitutes an implied but false representation. CASE also highlighted that the international best practice was that once accreditation has been granted in respect of a program, the university can claim to be accredited. Also, that a program shall be regarded as accredited till accreditation is withdrawn pursuant to Section 15 of the PEC Act. CASE submitted that it had already followed PEC accreditation guidelines and is open to any improvements or suggestions of the Commission or PEC.

(6) **CECOS University:**

CECOS submitted that as per the PEC Manual there is no method of prior accreditation for launch of a new engineering program but only prior permission is required. It stated that accreditation is an ongoing process, therefore, one can never be sure about the accreditation status of the program till the end. CECOS submitted that they had three courses, namely Electrical Engineering, Civil Engineering and Mechanical Engineering. The Mechanical Engineering program was new for which zero visit had been conducted and the advertisement specifically stated “subject to permission/approval of PEC”. CECOS submitted that intake of batches starts in the month of January and graduation takes place in March. In respect of the Electrical Engineering program, it stated that the batch of 2007 which graduated in March 2012 had not been issued Electrical Engineering degrees that were not accredited at time of graduation. CECOS also submitted that re-accreditation visit for accreditation of 2007 and 2008 batch had taken place in March, 2011. It also submitted that it had no intention to deceive and cannot be held responsible for any ill intention.

(7) **Foundation University:**

Foundation submitted that PEC is approached on a yearly basis for accreditation of BS Telecom & Software Engineering programs. The PEC accreditation team

has inspected the intake of 2008 on 11th June, 2012 and formal accreditation is awaited. BSc Software Engineering has been restructured as Computer Software Engineering with effect from Fall 2008. The competent accrediting body for this program is National Computing Education Accreditation Council (NCEAC). NCEAC has visited the university on 31st May, 2012 and formal accreditation is awaited. They further submitted that the university has amended its advertisement excluding “accreditation of the engineering program by PEC”.

(8) **Synthetic Fiber Development and Application Centre (SFDAC) College of Textile Engineering:**

SFDAC submitted that intake of batch of 2005 for the BE Textile degree was accredited in 2010 by PEC. Subsequent batches, however, could not be accredited due to various reasons, including financial difficulties. It submitted that the Textile Engineering degree and course is different in many respects from Electrical and Mechanical Engineering degrees and courses. The 2005 intake batch contained up to 150 students, whereas now there are 15 students. SFDAC stated that through its letter dated 6 July, 2012, it applied for accreditation for intake of batch of 2006. It also submitted that the total fee for a 4 year program was Rs. 400,000/- per student.

(9) **The University of Faisalabad:**

UOF submitted that it had claimed to be duly accredited by PEC and the word “duly” has a special significance in this context. It explained that by making the claim in its advertisement, it meant that all programs that were due for accreditation have been accredited while some are not still due for accreditation. Therefore, UOF has not engaged in any deceptive marketing practice and has only stated the factual position. UOF also stated that it was included in the list of accredited engineering programs advertised by PEC in the newspapers on 18 June, 2012. It stated that it had submitted its application with PEC for accreditation of batches of 2008 as it had already obtained accreditation for batches of 2007.

(10) **University of South Asia:**

USA submitted that all the advertised programs are approved by PEC, whereas accreditation is granted batch wise only. The formalities for accreditation have been observed by submitting the AC- 1 Form and the inspections have been conducted for accreditation of Civil Engineering program for batches of 2007 and 2008 and Electrical Engineering program for batches of 2006, 2007 and 2008. It informed the Commission that PEC had visited its premises regarding the accreditation of the advertised programs. USA also raised concerns about not

being involved at the enquiry stage and stated that the Enquiry Report seemed one sided. It further submitted that new advertisements are designed keeping the concerns of the Show Cause Notice in consideration and modified to read “approved by HEC and regulatory bodies”.

(11) Wah Engineering College (University of Wah):

Wah stated that the college began their Civil and Chemical Engineering programs in 2010, whereas other programs were older. Zero visits had been conducted for Civil and Chemical Engineering programs, and they had been given permission to launch by PEC. Electrical and Mechatronics Engineering programs had been accredited till 2007, and Mechanical Engineering till 2008. PEC had visited the college for accreditation of 2008 batch of Electrical and Mechatronics Engineering, and 2009 batch of Mechanical Engineering program. A team from PEC was visiting the college on the day of the hearing for accreditation of Mechatronics Engineering batch of 2008. Wah submitted that by the time the graduates were passing out, the accreditation process would be over. Wah informed that the graduates for 2008 intake were submitting their final projects and would be concluding their courses in approximately a month.

Wah stated that the college was “sponsored” by a trust, namely “Pakistan Ordinance Factories Welfare Trust”, which meant it was not a profit making organization. It was further submitted that last year four thousand students applied for a place out of which 350 students were successful. The Bench was informed that, on average, 150 students graduated every year and the number was increasing. In respect of the total fee charged for an engineering degree, Wah informed that it was approximately Rs. 57,000/- per semester. Wah also informed the Bench that the faculty strength was approximately 100, including lab engineers.

(12) Sarhad University of Science and Information Technology, Peshawar:

Sarhad raised objection about a show cause notice not being issued to Hajvery University that has been mentioned in the article referred to in the letter sent to the Commission. As per Sarhad’s submissions, PEC has not been authorized by HEC as it was created in 1976 by an Act of Parliament while HEC was established under a 2002 Ordinance. In respect of accreditation, Sarhad stated that the assertion that an institution intending to offer an engineering degree/course needs to obtain accreditation from PEC is incorrect as upon zero visit the institution is allowed to launch the program and admit students while accreditation is granted in the fourth year. Since not a single program in the country is accredited for 2011 batches, assertion of unfair competition under Section 10 (2) (a) of the Act, seems farfetched. Only 2 programs have been granted anticipatory accreditation for the year 2010. The expectation that in

order to mention accreditation of a program in 2011, the batches up to 2011 should be included in the First Schedule seems unreasonable. Furthermore, it submitted that institutions offering and advertising programs in engineering that have no permission to advertise/offer or admits students, are capable of taking advantage of the ignorance of general public/perspective student and create unfavorable competition for institutions that have obtained accreditation or initiated the process of accreditation. The Commission should initiate action against these institutions. The Enquiry Report has not met the very first objective of the Terms of Reference (TOR) which is to prepare a record of institutions offering admission in different engineering programs. The focus is on advertised admissions in a specific time frame. As per the First Schedule, 82 universities/institutions are offering engineering programs while the enquiry has singled out 27. The enquiry committee has been directed from the onset to work on specific lines rather than learn and understand as to what accreditation is and then develop a yardstick.

Since PEC itself advertised the accredited engineering programs and not batches, if the same is done by Sarhad should not be considered deceptive marketing; mention of Electrical and Civil Engineering programs as accredited in 2011 is neither false nor misleading as PEC has advertised the same way; and mentioning of the Electrical and Civil Engineering program as accredited does not harm business interests of other as contrary to the understanding of the enquiry committee, not a single program in the country has its batch of Fall 2011 accredited and included in First Schedule. It also drew attention to news published in daily Jang on 29 June 2012 wherein name of Sarhad is amongst 27 universities illegal and fake degrees. Sarhad has not introduced any illegal program or fake degree. Degrees issued are recognized by HEC and concerned regulatory bodies like PEC. If the Commission has any information/evidence to the contrary, the same may be shared with Sarhad otherwise the Commission may please take suitable action to dispel the impression created by the news item attributed to the Commission.

(13) Bahria University

*The representative of Bahria, informed the Commission that he wished to argue on jurisdiction of the Commission and would distinguish the present case from the previous one where Bahria had complied with the Order of the Commission. It was submitted that the entire Act was to be read in the light of the preamble. He stated that any undertaking that the Commission takes cognizance of must be performing an economic or commercial activity and have partaken in anti-competitive behaviour which has had an impact on consumers. Bahria stated that it was established by an Act of Parliament in 2000, namely Bahria University Act, 2000 under which the purpose of Bahria is “the promotion and dissemination of knowledge and technology” hence, Bahria is not involved in any commercial activity. Case law was cited on the statutory interpretation **(PLD 2010 Quetta***

52) and “business and commercial activity” (1976 PLC 2007). It was also submitted that according to 2010 YLR 1339 the Honourable Islamabad High Court held that the objective of a university was not business or commercial, rather that of a non-profit organization and that public sector universities established by an Act of Parliament were non-profit organizations.

It was stated that Bahria University was similar in status to Allama Iqbal Open University, as both were established by Acts of Parliament. Bahria stated that in 1981 PLC 403, it was held that benefits to students were different and distinguishable from benefits of service which provides transportation. Such distinctive character of a university took it out of the sphere of commercial activity. It cited 2011 CLD 927, wherein it was held that a university was an educational institution and could not be described as having undertaken a commercial activity. Bahria submitted that it was operating at running cost as sanctioned by the Government of Pakistan.

Another submission made was that the advertisement of intake by a university is not ‘marketing’ as an advertisement by a university for the intake of students is merely an offer to treat. It was further stated that should Bahria enter into any profit making activity, it would be ultra vires its own constitution, as its purpose was merely to disseminate knowledge.

Relying on PLD 2011 Lah 239, Bahria claimed that a student cannot be defined as a consumer. Furthermore, it submitted that as Bahria was not involved during the enquiry process and the Enquiry Report was finalized without providing opportunity of hearing, this was violative of the principle “audi alteram partem” (no one should be condemned unheard).

The representative of Bahria stated that there was another matter which he would like to bring to the attention of the Commission; he stated that the practice of publishing details of Show Cause Notice in newspapers should be curtailed, as it was against the provisions of the Act.

It was submitted that Bahria had advertised three programs for engineering, namely BEE Electronics and Telecommunications, BSc Software Engineering and BCE (Computer Engineering), and had stated that “all programmes are accredited by PEC”. It was further stated that at the time the advertisement was published in 2011, the 2007 intake batch had been accredited and application for accreditation of 2008 batches had been made in respect of all three advertised disciplines. He stated that it was therefore not “deceptive marketing practice”. However, in the hearing it was submitted that the Computer Engineering program that had been accredited up to intake of batch of 2005 only has been discontinued by Bahria. Bahria stated that it was committed to any direction or order of the Commission, and would be writing to the Commission to confirm that any direction of the Commission would be binding on it.

(14) Iqra University:

*Iqra raised objections regarding the jurisdiction of the Commission. It submitted that Iqra was established by an Act of the Sindh Assembly and is a Not for Profit Organization duly certified by FBR. As, Iqra is an educational organization, thus, does not partake in any commercial activity and the 'services' defined in Section 2(q) of the Act while defining the term 'undertaking'. It relied on **Allama Iqbal Open University v Irfan Boota (2011 CLD 927)** wherein the student claimed compensation for failure to send his assignment to the Controller, it was held that a student was not a 'consumer' as per S.2(c) of the Punjab Consumer Protection Act 2005 and the university was not a 'service provider'. Iqra also cited **Employees Union, Jamia, Karachi v Registrar of Trade Unions, Sindh and 2 others (1981 PLC 403)** where the Court distinguished the services provided by a university from material services provided by an industry. It was further submitted that Iqra is not undertaking a commercial activity but is only performing a State function.*

*It also submitted that the enquiry is in violation of fundamental rights i.e. Article 10-A Right to a fair trial as was conducted without associating Iqra which is against the principles of natural justice that no one should be condemned unheard. The act of not associating Iqra in the enquiry vitiates the legal effects of it as stated in **Mujeeb Shami v Chief Commissioner, ICT (2009 PLD 33)**. The enquiry is also against Article 25-Equality of Citizens, of the Constitution as only 27 universities have been singled out.*

In respect of the accreditation process, Iqra submitted that nowhere in the PEC Manual does it state that accreditation once granted lapses at any time and PEC has not laid any guidelines as to the use of the term accreditation, in fact, PEC uses the term in the same sense as Iqra, as it advertised list of accredited engineering programs without any mention of batch wise details. Furthermore, it submitted that the PEC Act provides accreditation to both institutions and qualifications as provided in the First Schedule and once accreditation is granted it is valid till withdrawn under Section 15 of the PEC Act. Iqra submitted that there is no scheme in the PEC Manual for initial accreditation, accreditation and re-accreditation and batch wise detail is only referred to when withdrawing accreditation. As per PEC practice batches are only accredited in their 3rd or 4th year of the program. Iqra also stated that if the Enquiry Report's position is taken then no university had accreditation for 2011.

Iqra also highlighted that it charges approximately Rs. 290,000/- for a four year program and has very low fees compared to other private sector universities and is thus not interested in making profits. It is conducting a public service. It submitted further that it has applied for re-accreditation and will comply fully with any decision taken by the Commission.

(15) University of Management and Technology (UMT):

UMT submitted through its reply that the Show Cause Notice does not disclose the base of initiation of proceedings i.e. whether the Commission initiated itself or any private person's complaint, therefore, the enquiry under Section 37(1) of the Act is not valid. It also raised objections in respect of an opportunity of being heard not being provided by the enquiry team, hence, the Show Cause Notice under Section 30 of the Act is violative of the fundamental right of giving an opportunity of hearing. It also stated that UMT is a registered trust and exempted from payment of taxes by the Federal Board of Revenue (FBR).

UMT submitted that it is under the impression that once accreditation has been applied for and the first accreditation has been granted by PEC the program could be advertised as "accredited by PEC" and can only be withdrawn pursuant to Section 15 of the PEC Act. The representative of UMT submitted that two relevant laws apply to the subject proceedings. Firstly, there was the PEC Act, and secondly, the Act. He further stated that it was a clear rule of law that any action not prohibited is permitted. He brought the Bench's attention to S.2 (ii) PEC Act and submitted that UMT's engineering courses appeared in Schedule 1 of the PEC Act, therefore it must be accredited. It was further stated that the use of the word "may" in S.10 (2) PEC Act meant that accreditation is not mandatory. It was then stated that since PEC could not enforce the provisions, i.e., they had no coercive mechanism for compliance apart from S.15 PEC Act, it further strengthens the argument that the use of the word "may" means applying for accreditation from PEC is not mandatory. Another submission of UMT was that a show cause notice should have been issued to PEC, as they have been guilty of delaying policy decisions.

One of the programs advertised by UMT was the Industrial Engineering program in respect of which zero-visit had been conducted and 2012 intake had been allowed for 40 students. As the program had been advertised in 2011, UMT informed the Commission that the program has not been advertised as accredited and students that had already graduated were informed by UMT that they would not be awarded an accredited degree. It stated that it was clearly mentioned on UMT's admission form that until PEC accredits a program; UMT cannot guarantee an accredited degree. With regard to UMT's Electrical Engineering program, the Bench was informed that the batch of 2008 are due to graduate in October while the 64th meeting of the Engineering Accreditation & Quality Control Evaluation Committee is due to be held in October 2012. The reason for the delay was that UMT had made a late application for accreditation.

In respect of the Textile Engineering program it was stated that the Textile Engineering degree was first launched in 1993 as Bachelors in Textile Technology and Management ('BTTM'). UMT stated that the title was changed in 2008 or 2009. The Textile Engineering program of UMT is not a PEC accredited program. UMT had applied for direct accreditation of that program, however,

PEC informed UMT that they do not directly accredit programs, rather UMT should apply for zero-visit and follow the procedure. UMT has not, to date, applied for a zero-visit for their Textile Engineering program. UMT informed the Bench that the total fee for their four year Textile Engineering program was approximately Rs. 800,000/-. Furthermore, UMT submitted that they have removed the word “engineering” from the title of the program, and the revised advertisement is submitted with its written reply. In respect of UMT’s Avionics and Aerospace Engineering program, the Bench was informed that there have been no admissions in these programs.

UMT submitted that there was no mala fide on their part and they were committed to compliance.

(16) Isra University:

Isra submitted that its advertisement does not state that BE (Electrical) program is “Accredited” by PEC but “recognized by PEC”. The impression intended to be conveyed by the advertisement was not that the program was accredited by PEC. Isra during its admission campaign mentioned on its website that PEC had approved the Zero Visit and allowed the launch of BE (Electrical) Program. Isra also placed a link on its website leading to the PEC Engineering Accreditation & Quality Evaluation Committee meeting minutes so students could see the Zero Visit approval. Isra had no intention to and did not disseminate false or misleading information to consumers regarding accreditation. Furthermore, the launch of the program was only done post receiving approval from the PEC and thus did not in any way harm the business interests of competing undertakings.

During the hearing the representative of Isra stated that before issuing the Show Cause Notice the Commission should look into the repute of the concerned university, as Isra is declared as W-3 University by HEC. Furthermore, the Enquiry Report should not be publicly displayed. The public display of the Enquiry Report and issuance of Show Cause Notice can disturb the reputation of Isra. In respect of the strength of the students in the BE Electrical program, Isra informed the Bench that they had been allowed by PEC to intake only 40 students and had admitted the same.

(17) Ziauddin University:

Ziauddin stated that the Commission has no jurisdiction to take cognizance of the matter as only PEC and HEC are the competent authorities to regulate institutions of higher education. It submitted that Ziauddin is not an “undertaking” within the meaning of section 2(1)(q) of the Act, therefore, the Act does not apply to Ziauddin. The Show Cause Notice is based on incorrect facts and issued without affording opportunity of hearing to Ziauddin. The advertisement was based on permission granted by the PEC, therefore, was

neither deceptive, nor misleading. No claim of accreditation had been made by Ziauddin, it was only stated that the program had the approval of the PEC which is a fact.

It stated that since PEC has the powers to give permission to an institute for offering an engineering degree/program, it is the competent authority to issue the Show Cause Notice to engineering institutes.

Ziauddin informed the Bench that the Bio Medical Engineering course was started in 2010. The representative of Ziauddin submitted that two visits were conducted by PEC for Bio Medical Engineering course up till now and zero visit was awarded by PEC in 2009 and afterwards another visit was awarded by PEC. However, in its written reply it stated that PEC granted green signal to launch the Bio Medical Engineering program through its 58th meeting minutes and letter dated 12 August 2010, to launch the program in February 2010.

Isra informed the Bench that it had 15 students in first batch, 30 in 2nd batch and 15 students in 3rd batch. Their fee is Rs: 100,000/- per annum and it is a private university. It was prayed that the Show Cause Notice be withdrawn because Ziauddin has not acted in an illegal manner, however, submitted that it will follow all the guidelines given by the Commission.

(18) Sukkur Institute of Business Administration:

Sukkur IBA submitted that it's BE Telecom Engineering Program has been listed in the First Schedule of the PEC Act for the intake of the batch of 2007. The batch of 2007 is the first batch of Sukkur IBA and it has applied for re-accreditation for the intake of batch of 2008. Sukkur IBA was upgrading their labs and adding more work stations in accordance with the suggestions of PEC. Furthermore, it has used the words "approved and recognized" in the advertisement while the accreditation process was taking place. Therefore, it has not disseminated any false information and not violated the provisions of the Act.

In respect of the fee being charged by Sukkur IBA, it stated that the total fee for a 4 year program was currently approximately Rs. 400,000/-. It also informed the Bench that many students were pursuing their degrees on full scholarships. PEC had allowed Sukkur IBA to intake 40 students; however, only 12 students had graduated from the first batch. Sukkur IBA also informed the Commission that they had begun offering a free of cost foundation course to bring new students up to par with those of other universities, before they began their respective engineering courses.

(19) University of Central Punjab:

UCP stated that not a single program in Pakistan had obtained accreditation from PEC for intake of batches in 2011. However, each institution has advertised

for admission of 2011 intake. Therefore, UCP's advertisement doesn't have the capacity to harm business interest of any of its competitors. The Enquiry Report has calculated financial losses to students based on incorrect assumptions.

The representative of UCP at the hearing submitted that UCP's case was different since its program was accredited. He submitted that it was UCP's stance that the Enquiry Report missed out on certain factual issues, such as the distinction between students who are being admitted into a school, and the relevance or lack thereof of accreditation of a program at that stage, as opposed to a student who has already graduated. He further submitted that the PEC Act itself is silent on the time period for which accreditation will take place. The practice of awarding accreditation for a maximum of three years has been devised through the PEC Accreditation Manual, which, in the parlance of lawyers, would be considered secondary legislation, whereas the PEC Act would be considered primary legislation. He submitted that there existed different criteria for the accreditation of local universities and that of foreign institutions. Foreign institutions, he submitted, which fall under the Second Schedule of the PEC Act, are not subjected to re-accreditation on an ongoing basis. UCP further submitted that it had only used the word "accredited" once its program had in fact been accredited by PEC in 2006, and not prior to that, and that a lot of confusion had been created by the terminology used by PEC. UCP expressed its desire to put their opinion vis-à-vis the advertisement of an engineering program, i.e., the act of applying to a university based on its advertisement of a particular program is not as simple or straightforward as buying a product based on its advertisement on a billboard. UCP further stated that one of the outcomes that it expected from this exercise was that the Commission would issue guidelines to PEC as to what specifically was allowed to be advertised, and to then circulate these guidelines to all universities so that there would be no ambiguity in this regard in the future. UCP informed the Commission that the total fee the university charges for the four year degree program was approximately Rs. 980,000/-. UCP submitted that it would comply with the directions of the Commission.

(20) Institute of Business Management:

IBM through its written reply submitted that the Act was not applicable to IBM as it did not indulge in any sort of commercial activity and is a non-profit organization. It stated that the complainant has grievance against one particular university and the Commission has for unknown reasons expanded the scope of the complaint without any legal cause. IBM stated that the enquiry officers should have sought its opinion before issuance of the Show Cause Notice. Furthermore, the enquiry was entrusted on 29th December 2011 but was concluded on 18th June 2012, in grave contravention of the timeline which restricts the enquiry officers to conclude the enquiry within 2 months hence it is a nullity within law.

IBM submitted that the advertisement was in accordance with PEC's advertisement regarding accredited programs and PEC is the only authorized and

competent forum to hold whether the advertisement in question is in violation of the PEC Act. It made reference to Sections 10 and 14 of the PEC Act and the AC-1 Form and submitted that these only deal with institutes and programs and not batches. Furthermore, entries in the Second Schedule of the PEC Act make it clear that a qualification refers to only the name of the institution and the degree. There is no mention of batches in the Second Schedule, therefore, mention of batches in the First Schedule is superfluous and an additional information.

(21) Sir Syed University of Engineering and Technology:

Sir Syed stated that it is not indulging in any sort of commercial activity and further the university is a non-profit organization hence any law mandated to provide free competition in all sphere of commercial and economic activity has no applicability on the university. Only PEC is the competent forum to regulate accreditation of engineering education, therefore, the Show Cause Notice is without jurisdiction. The complainant has grievances against one particular university but the Commission for unknown reasons has extended the scope of complaint without any legal cause. Sir Syed also submitted that the entire enquiry was violative of principles of natural justice and it has been condemned unheard and opportunity to cross examine the Commission is not provided. The Enquiry officers should have sought the opinion of universities before issuing this Show Cause Notice. Furthermore, the advertisement in print and electronic media was published in accordance with the PEC advertisement.

(22) Pakistan Airforce- Karachi Institute of Economics and Technology

PAF-KIET submitted that as it is a non-profit organization that does not engage in any sort of commercial activity, therefore, the Act is not applicable on PAF-KIET. Furthermore, PEC is the only competent forum to regulate engineering institutions. The complainant had grievance against one particular university but the Commission has for unknown reasons expanded the scope of enquiry without legal cause. It also submitted that the procedure of the enquiry is violative of principles of natural justice as no notice was provided, no opportunity of cross examination was provided, charges leveled were not provided and the university was condemned unheard. The Enquiry Report was completed in contravention of the timeline of 2 months. PAF KIET fully complies with PEC requirements based upon which the name of the university was included the First Schedule of the PEC Act. The advertisement was published in accordance with the PEC advertisement which listed PAF-KIET as duly accredited by PEC. Section 10 and 14 of the PEC Act deal with qualification of a program and institute but does not indicate any procedure for accreditation of batches. Also, no information regarding batches is given in the AC-1 Form. The entire process is transformed into accreditation of batches by some internal process of the PEC when the report goes to the Engineering Accreditation & Quality Evaluation Committee and when notification occurs on First Schedule. Furthermore, the term re-accreditation implies that the

program has received accreditation. Entries in the Second Schedule of the PEC Act make it clear that a qualification refers to only the name of the institution and the degree. PAF-KIET submitted that international practice of accreditation was carried out by private bodies, not by government authorities, and the application for accreditation was a voluntary act by the institute, rather than mandatory as was the case in Pakistan. PAF-KIET submitted that it's BE Electronics course is accredited up to intake batch of 2008.

(23) Usman Institute of Technology:

UIT submitted that an Act or Ordinance, including PEC Act and its Schedules, could only be altered by an Act of Parliament. Further, PEC Act, it submitted, deals with accreditation and de-accreditation, and not re-accreditation. It also submitted that accreditation must be open ended and not linked to a batch, since PEC's mandate did not extend to linking accreditation with batches. UIT further submitted that the internal practice of accreditation of programs by batches could not over-ride the provisions of law. UIT also stated that its students were not "consumers" for the purposes of the Act. It stated that since PEC was the regulatory body, it should issue guidelines as to what is allowed in advertisements.

All degree programs are duly accredited by the PEC, reference was made to SRO 237(I)/2012 dated March 5, 2012. The BE Electrical Engineering program was started upon PEC's proposal during re-accreditation visit. For the intake of fall 2009, permission was granted by PEC to change the nomenclature and merge the 3 different degree programs into BE Electrical (Electronics, Telecom and Computer Systems Engineering). UIT has completed substantial work and have processed accreditation of new discipline as per PEC directive. Lastly, UIT submitted that publishing of the offending advertisements was not a deliberate action, and there was no mala fide on the part of the institution.

(24) Abasyn University:

Abasyn through its written reply submitted that it is offering the BE Electrical Engineering program with the explicit written permission of PEC, which was granted after a formal inspection by PEC of Abasyn's facilities for BE Electrical Engineering program. The permission was granted vide letter dated November 3, 2010 to launch Bs. Electrical Engineering program in 2010. The advertisement does not contain any false or misleading information as BE Electrical Engineering has obtained proper permission from the PEC. Abasyn requested the Commission to withdraw the Show Cause Notice and correct position about it may kindly be republished in the press to avoid confusion/doubt in the minds of the general public/parents of the students.

(25) The University of Lahore:

UOL submitted that the Show Cause Notice was issued arbitrarily, without jurisdiction and not in consonance with the aims and objectives of the Act. It also stated that the Enquiry Report is one sided and biased and completed without the point of view of HEC, PEC and UOL. Furthermore, Section 37(2) of the Act only allows the Commission to entertain complaints lodged by an undertaking or registered association of consumers which Mr. Firdous Ayub is not, thus he has no locus standi. Also, UOL is not engaged in the production of goods as per section 10(2)(b) of the Act, therefore, the question of violation does not arise. UOL drew the Bench's attention to paragraphs 9, 10 and 11 of the Show Cause Notice. It was submitted that the Show Cause Notice contained factual errors as UOL had not used the word "accredited" in its advertisements but it had used the word "approved". UOL further stated that since the issue was over terminology, a distinction must be made between the words "approved" and "accredited". It submitted that since there is no legal definition of the word "approved" in the PEC Act, therefore, most institutions use the general interpretation of the word. UOL further stated that the Commission's role was to enforce the provisions of the law in a market that is intrinsically competitive. However, the market for engineering courses was not competitive, and the students were suffering because of it. By way of example, Comsats gets free land and capital grants, and yet charges more than other universities for similar or identical courses. It was further submitted that many competing universities enjoy subsidies which they do not pass down to the students. UOL stated that it would provide to the Commission proof of actual cartelization in the education sector. It stated that its Electrical Engineering program was accredited for the intake batch of 2008 and 2009. The total fee for a four year engineering course was approximately Rs. 542,000. UOL stated that it would follow the Commission's directions and would welcome guidelines in this regard for the sake of certainty in the future.

(26) National University of Computer & Emerging Sciences (FAST):

FAST stated through its written reply that the Act is for business undertakings meant for earning profits through commercial and economic activities whereas FAST is a non-business legal/charitable entity meant for advancement and excellence in higher education. FAST is a registered charitable organization under the Societies Act, 1860. It stated that no opportunity of hearing has been provided by the enquiry committee to FAST and a verdict has been passed. In respect of the accreditation process, it stated that the enquiry committee should have consulted PEC for a proper understanding of the accreditation process. It explained that upon zero visit and requirements being met, PEC allows an institution to launch a degree program and accreditation is a gradual 4 year process, on completion of which the program is included in the First Schedule of the PEC Act. PEC carries out accreditation of engineering degrees and issues notices and public alerts for parents/students in the newspapers with respect to

defaulting institutions and has not issued any such notice to FAST. FAST stated that the Enquiry Report bundled all universities together with un-accredited “fly by night types”, and that their reputation was completely damaged as a result of this. If FAST had been included in the proceedings from the very beginning, perhaps it would not have suffered any damage to its reputation as a result of this “media trial”, which resulted from the Commission publishing the Enquiry Report online. That all programs of FAST are accredited on time and not a single batch has passed out without accreditation. The fee charged for a 4 year engineering program was approximately Rs. 616,000. It was allowed to admit 160 students in the Islamabad campus.

(27) Swedish College of Engineering and Technology:

Swedish submitted that they had used the word “allowed” and not the word “accredited”. Furthermore, that all advertised programs are in process of being accredited. It informed the Commission that for BE Electrical, Electronics and Mechanical Engineering programs, PEC has already conducted zero visits. The question of Show Cause Notice does not arise because Swedish is proceeding as per PEC rules. Upon enquiry, it stated that the fee charged per semester was approximately Rs. 76,000.

6. PEC was requested to take part in the hearings and as a representative of PEC, Mr. Osaf Malik, Deputy Registrar (Accreditation) attended all the hearings. At the outset the Bench would like to record its appreciation for Mr. Osaf Malik who provided able assistance to the Bench in the disposal of the matter. The representative of PEC made submissions and offered clarifications regarding the PEC accreditation process and the status of the programs of each of the institutions during the course of hearings.

ISSUES

7. In light of the findings of the Enquiry Report, the submissions made by the Undertakings and PEC, the following issues need to be addressed:
 - Whether the institutions are conducting an economic activity and fall within the purview of the term ‘undertaking’?
 - Whether student can be defined as ‘consumer’?

- What does the expression ‘accredited by PEC’ mean or connote in the subject advertisements?
 - Whether the subject advertisements by the educational institution can be termed as deceptive marketing in terms of Section 10 and thus a violation under the Act?
8. Prior to addressing the issues listed above, we deem it appropriate to address a few of the objections raised by some of the Undertakings. These Undertakings had submitted that the complaint was made against Hajvery University and the Commission had gone beyond the parameters of the complaint by initiating an enquiry and issuing Show Cause Notices to the Undertakings.
9. It is important to note that the enquiry was initiated pursuant to sub-section (1) of Section 37, which provides the Commission ample powers to initiate an enquiry on its own initiative. Sub-section (2) of Section 37 deals with complaints from Undertakings, as the letter received from Mr. Firdous Ayub was not a formal complaint; enquiry was not initiated under Section 37 (2) of the Act. Nothing bars the Commission to proceed to take cognizance of the subject matter on its own. Furthermore, the news item that was attached with the letter of Mr. Firdous Ayub highlighted the general state of affairs though it specifically mentioned Hajvery University. The Bench was informed that as Hajvery University had not advertised/claimed accreditation for intake of students in 2011; show cause notice under Section 10 could not have been issued to it. Another objection raised by the Undertakings was that Mr. Firdous Ayub being an individual had no *locus standi* to submit a complaint. Although, it has been clarified that the letter from Mr. Firdous Ayub was not a complaint and not the basis upon which enquiry was initiated, however, even if it was a complaint, Section 37 (2) does not bar filing of complaints by private individuals. The expression used is that Commission may initiate proceedings on receipt of complaints from an undertaking, which is defined under Section 2 (1) (q) of the Act and includes natural person.

10. Some Undertakings have also raised the objection that they had not been involved at the stage of the enquiry and had not been able to present their case prior to the issuance of the Show Cause Notice. Hence, the Show Cause Notice was not valid and this was in violation of the principles of natural justice i.e. that no one shall be condemned unheard. One of the undertakings relied upon a judgment of Quetta High Court (2012 MLD 134). It was also submitted that the provisions of the Act had been violated as the Undertakings were not provided an opportunity to make submission during the course of the enquiry.
11. With respect to the objection that the Undertakings were not involved at the stage of the enquiry, it needs to be appreciated that under the Act the Commission is under no obligation to include undertakings at the enquiry stage, the enquiry committee in the present case has not violated any provisions of the Act.
12. The meaning of the term natural justice and what it entails has been discussed at length in the Order passed by the Commission in the matter of Jamshoro Joint Venture Limited and LPG Association of Pakistan on December 14, 2009¹ (the “**JJVL-LPG Order**”). The relevant parts are reproduced below:

“96. Natural justice has been described as a concept, sadly lacking in precision” (as per R v Local Govt. 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 rules of natural justice are not cast in a rigid mould and that depending upon the facts and circumstances of each case, there is no 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 UK and USA.

¹ http://www.cc.gov.pk/images/Downloads/lpg_final_order_proof_15_december_2009.pdf

Rees and Others; (1994) 1 All E.R. 833 at page 842-845:

97. *It was held by the Privy Council that there were many situations in which natural justice did not require that a person must be told of the complaints made against him and given a chance to answer them at the particular stage in question. Essential features leading the Courts to that conclusion had included the fact that the investigation was purely preliminary, that there would be a full chance adequately to deal with the complaints later, that no penalty or serious damage to reputation was inflicted by proceeding to the next stage without hearing, that the statutory scheme properly construed excluded such a right to know and to reply at the earlier stage.*

Regina v Saskatchewan College of Physicians and Surgeons; (1966) 58 D.L.R. (2d) 622.52

98. *Held that the preliminary inquiry committee had no power to decide whether a doctor had been guilty of misconduct; it had no power to affect any of his legal rights in any way whatsoever; and it had no power to impose any penalty or obligation upon him. Hence the requirements of natural justice did not apply.*

Parry Jones v Law Society and Others; (1969) 1 Ch Division 1 at pp. 8 and 10:

99. *Held by the Court of Appeal that where the only inquiry was as to whether there was prima facie evidence, natural justice did not require that the party should be given notice of it.*

100. *From the United States of America the following precedents may be referred to:*

-Traditional notions of due process do not attach in non-adjudicative, fact finding investigations. This was held in U.S.-Georator Corp. v. Equal Employment Opportunity Commission, 592 F.2d 765 (4th Cir. 1979).

-Accordingly, the full panoply of due process safeguards need not necessarily be afforded to an individual during the investigative, as opposed to the adjudicative, phase of an administrative proceeding. (U.S.-Tolbert v. McGriff, 434 F. Supp. 682 (M.D. Ala. 1976))

Putting things in context, a reading of the Competition Ordinance and General Enforcement Regulations 2007 makes it clear that there is no mandatory requirement on the Commission to issue a notice/hold a hearing at the inquiry stage. Regulation 16 allows the Commission to commence an inquiry, inter alia, suo moto or in

the case of a complaint. The standard to be satisfied in the latter case is if facts before it appear to constitute a contravention of sections 3, 4, 10, 11 and/or provisions of Chapter II of the Ordinance. Thus there is no requirement of notice or hearing at the stage of inquiry. Therefore it is our considered view that requirements of natural justice (a hearing) do not apply at the initiation of, and during an inquiry, by the Commission. Hence in light of clear local and foreign precedents we find no merit in the assertions made in this regard.”

13. Relying on the above, we hold that there has been no violation of the principles of natural justice at the stage of the enquiry.

14. It is also important to highlight that proceedings are initiated under Section 30. The issuance of the show cause notice is an opportunity for the undertakings to make submissions in writing and to present their case through an authorized representative in the hearings conducted by the Commission. The JJVL-LPG Order also discusses the effect of the issuance of a show cause notice:

“102. As quoted above the Honourable Supreme Court has stated in 2006 PTD 2502 that it might suffice if reasonable opportunity of hearing is granted to a person before an adverse action or decision is taken against him. This dictum of the apex court clearly draws a, quite logical, distinction between an adverse order and an adverse action. As will become clear, the latter is related to recovery proceedings and not a finding of contravention of the law. Such a distinction is amply evident from other cases as well. In the case reported at 2007 PTD 763, an appeal against levy of sales tax on a vehicle was preferred. Sales Tax Department filed an appeal against the decision of the High Court with the Supreme Court. The appeal was pending before the Supreme Court when Adjudicating Officer passed an order against the tax-payer that amount in question could be recovered subject to the outcome of the said appeal pending before the Supreme Court. It was held that “cause of appeal against this Order of the Adjudicating Officer did not arise as no adverse action had been ordered.” Tribunal, for satisfaction of the appellant, determined that amount in dispute was not to be recovered until the Supreme Court gave its decision. Recovery could only be made if Supreme Court decided in favour of the Revenue Department. Similarly, in the case of 2006 PTD 2207, Petitioner Company contended that it had already appealed to Appellate Tribunal against Impugned Order of the Department. Appeal was pending but due to nonavailability of a Member

(Technical) the Tribunal had not taken up the appeal for a hearing. Petitioner further contended that it would be satisfied if petition was disposed of with observation that till said filed appeal was taken by the Tribunal, no adverse action would be taken against the petitioner on the basis of Impugned Order. High Court ordered that Department would not take any adverse action against Petition on basis of Impugned Order and recovery notice, till appeal of Petitioner was taken up for hearing.

103. Furthermore, the Honourable Lahore High Court, Lahore, through its Order dated 24.8.2009 in W.P. No. 15616/2009 (related to the Cement case) observed the following: "There is a lot of sensitivity about the repercussions of an adverse order being passed as the same would affect the market capitalization of the petitioner companies and may expose them to further criticism and adverse action by other authorities. Be that as it may, for the present it is appropriate that the Commission be allowed to complete its proceedings in accordance with law; this includes the disposal of the pending applications by the petitioners and the issuance of final orders in the matter of show cause notices issued to the petitioners. However, until the next date of hearing such order shall not be published nor be issued to the press nor any adverse action thereunder taken against the petitioners".

104. Therefore, we feel it is pertinent to point out that, in our considered view on the basis of case-law and judicial pronouncements quoted above, even a finding of contravention of the law does not amount to an "adverse action". From the afore referred judgments, the position emerges that "adverse action" relates to recovery proceedings. As a natural corollary of this, issuance of Show Cause Notices, requesting the parties to submit their written replies does not in any manner mean taking of adverse action as parties at that stage are only called upon to Show Cause in writing and also to avail the opportunity of hearing. Therefore, the contentions of JJVL and LPGAP that by issuance of Show Cause Notice and conducting hearing, the Commission has taken adverse action, having no force are hereby rejected."

15. In view of the above findings of the Commission, even the issuance of a show cause notice is not tantamount to an adverse action. The Undertakings after the issuance of the Show Cause Notices have been provided an opportunity to present their case as prescribed under the Act, which opportunity they have availed to the fullest.

We now, therefore, proceed to address the issues.

Whether the institutions are conducting an economic activity and fall within the purview of the term ‘undertaking’?

16. Several of the Undertakings submitted that as the provisions of the Act deal with undertakings involved in commercial or economic activity and as the State is responsible for providing education they are performing a function of the State, hence, the provisions of the Act do not apply to them. In support of this submission an Undertaking had relied upon a decision of the Islamabad High Court titled *Allama Iqbal Open University, Islamabad v. Ministry of Interior* (2010 YLR 1339). Islamabad High Court had held in this decision that the subject university, although body corporate, falls under the category of charitable corporations as it is organized exclusively for educational purpose, does not distribute earnings for benefit of private individuals and does not participate in campaigns for political campaigns or lobbying. This case is not relevant as the determination of status is for tax exemption purposes. It in no way establishes that educational institutions are not carrying out economic activity or that such institutions have immunity to embark upon anti-competitive practices barred by the Act.

17. Some of the Undertakings stated that as they were operating on non-profit basis they could not be regarded as performing any commercial or economic activity. In this respect the Undertakings relied upon PLD 2005 SC 530, PLD 2010 Quetta 52 and 2011 CLD 927. The first two judgments relate to the submission that the Commission has gone beyond the ambit of the Act as envisaged in the preamble. It is argued that in terms of the preamble, Commission has to ensure free competition with respect to commercial and economic activity. The reliance, however, is misconceived as the decisions relate to anti-terrorism laws emphasizing holistic reading of law having no bearing with the issue at hand. The third judgment is irrelevant as this relates to the definition of consumer and

service provider under the provisions of the Punjab Consumer Protection Act, 2005 in a totally different context. It was also stated that the subject institutions/undertakings do not fall under the definition of the term ‘undertaking’ provided in Section 2 (1) (q) of the Act, as they are not involved in the provision or control of any service.

18. In this regard, we refer to the preamble of the Act:

“Whereas it is expedient to make provisions to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior and to provide for the establishment of the Competition Commission of Pakistan to maintain and enhance competition; and for matters connected therewith or incidental thereto” (Emphasis Added)

The Term ‘services’ has been defined in Section 2 (1) (o) of the Act, which provides as under:-

“Services” means a service of any description whether industrial, trade, professional or otherwise”

19. As per EU Competition Law review²

The Economic Nature of HEIs³

...undertaking ...has been defined by the Court as ‘every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed’. It further defined an economic activity as every activity that consists of ‘offering goods or services on a market’...

Regarding competition law HEIs would be conducting an economic activity if they offered services on a market. This does not require the HEIs to actually make a profit. Neither can their public character prevent the classification as undertaking. All that matters is the

² Higher Education Institutions and EU Competition Law (Andrea Gideon) Volume 8 Issue 2 pp 169-184 published in July 2012

³ Higher Education Institutions

(potentially) economic nature of the service. Thus it very much depends on the way a system is organised; if it is organised as a market and private for-profit providers (potentially) compete with them, HEIs are more likely to be classified as 'undertakings'.

20. For ease of reference some of the generally accepted definitions of the terms 'economic activity' 'commercial activity' and 'gross domestic product' are also reproduced which further substantiate the above position:

*"Economic activity is activities in the economy that contribute to the Gross Domestic Product of the Nation. Economic activities are related to production, distribution, exchange, and consumption of goods and services"*⁴

*"A commercial activity includes any transaction or any regular course of conduct that is of a commercial character. It includes the selling, bartering or leasing of donor, membership, or other fund-raising lists"*⁵

*Gross Domestic Product includes the monetary value of all the finished goods and services produced within a country's borders in a specific period, though GDP is usually calculated on an annual basis. It includes all of private and public consumption, government outlays, investments, and exports less imports that occur within a defined territory."*⁶

21. Also, the term 'undertaking' has been defined in Section 2 (1) (q) of the Act, which provides as under:-

"undertaking" means natural or legal person, 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 or undertakings"

⁴ www.businessdictionary.com

⁵ www.businessdictionary.com

⁶ www.businessdictionary.com

22. The terms ‘undertaking’ as defined by European Commission for the purpose of EU competition law⁷ is as follows:

***Undertaking:** For the purpose of EU antitrust law, any entity engaged in an economic activity, that is an activity consisting in offering goods or services on a given market, regardless of its legal status and the way in which it is financed, is considered an undertaking. To qualify, no intention to earn profits is required, nor are public bodies by definition excluded...*

This view is also supported by the following:

In Van Landewyck (Heintz) Sarl v Commission [Case 209-215/78], the Court of Justice held that any entity engaged in commercial activity is capable of fulfilling the definition of an undertaking, even in the absence of the pursuit of profit.

In Commission v Italy [Case C-35/96] The Court of Justice held that public bodies are undertakings for the purposes of the competition rules where they "offer for payment, services [...] relating in particular to the importation, exportation and transit of goods, as well as other complementary services such as services in monetary, commercial and fiscal areas". In certain cases, a clear link between participation in the market and the carrying out of the economic activity is required.

23. All the universities/ institutions mentioned in the Enquiry Report are offering services on a market i.e. they are institutions offering engineering courses/degrees in distinct fields and are duly covered by the definition of the terms ‘services’ in view of its wide ambit under the Act. We have no doubt in holding that all subject institutions are undertakings, in terms of Section 2 (1) (q) of the Act. Also, in view of what has been stated above, such activity clearly stands established as an economic activity.

⁷ http://ec.europa.eu/comm/competition/general_info/u_en.html#t62

Whether student can be defined as ‘consumer’?

24. Some of the Undertakings have argued that a student cannot be regarded as a consumer and have attempted to substantiate this claim through submission of case laws. The Undertakings relied upon Allama Iqbal Open University and Others v. Irfan Boota and Others (PLD 2011 Lah 239) and Univeristy of Jammu and others v. Brinder Nath and others (AIR 2000 J&K 93). It is important to note that PLD 2011 Lah 239 deals with the definition of consumer provided under the Punjab Consumer Protection Act, 2005 wherein it was held that the definition of consumer included and referred to a person or entity that was a beneficiary of services that had been hired for consideration. Furthermore, that an application to appear in an examination conducted by the educational institute could not be regarded as a service, therefore, it was observed that the student could not be regarded as a consumer in this context. In AIR 2000 J&K 93 it was held that the function of conducting examination, evaluating answer papers and publishing results is not covered by the definition of services. These cases are quite distinct and under a different law, the reliance therefore, seems to be misconceived. Keeping in view the definition of ‘services’ under the Act and as referred above in paragraph 18; it has a very wide scope and we are, therefore, of the considered view that the educational services rendered by the subject institutions fall within the purview of the Act and students who are recipients of educational services or beneficiaries thereof fall within the purview of ‘consumers’ for the purposes of the Act.
25. In this regard we refer to the order in the matter of M/S China Pak Mobile Limited & M/S Pakistan Telecom Mobile Limited (the “**Zong-Ufone Order**”)⁸ where under it was observed that for the purpose of Section 10 of the Act, the consumer to whom information is disseminated has to be the ‘ordinary consumer’ who is the usual, common or foreseeable user or buyer of the product. Such a

⁸ <http://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

consumer need not necessarily be restricted to the end user. The Commission held that as one of the objectives of the Act is to protect consumers from anti-competitive practices; hence, the beneficiary of the law is the consumer. Therefore, in order to implement the law in its true letter and spirit, the scope of the term 'consumer' must be construed most liberally and in its widest amplitude.

What does the expression 'accredited by PEC' mean or connote in the subject advertisements?

26. The Undertakings objected to the definition of 'accreditation' used in the Enquiry Report and stated that the enquiry officers had not understood the process of accreditation. They were of the view that accreditation was an ongoing process and once the status of accreditation was granted by PEC to an engineering institution, the institution could claim to be accredited by PEC unless accreditation was withdrawn under Section 15 of the PEC Act.
27. It was also submitted that accreditation pursuant to the provisions of the PEC Act, particularly Sections 10 and 14, is not batch specific but only deals with institutions and programs. In support of this submission, the Undertakings also stated that as the accreditation of foreign institutions listed under the Second Schedule of the PEC Act were not accredited in accordance with batches; therefore, the same principle would apply to local institutions.
28. It was also argued that in respect of a new program, PEC grants permission and not 'accreditation' as stated by the Enquiry Report. Furthermore, a program can only be accredited or re-accredited in the third or fourth year of the program and prior accreditation is not possible. The use of the word 'may' in S.10 (2) of the PEC Act meant that accreditation is not mandatory. The Undertakings also highlighted the international best practices according to which accreditation is a voluntary procedure and once it has been granted in respect of a program, the university could claim to be accredited.

29. The representative of PEC stated that the entire accreditation procedure, which is mandatory, is contained in the PEC Act, the PEC Manual and the Rules, which are available on PEC's website. Further, all terms are defined in the PEC Act. On behalf of PEC it was stated that it never accredited a program open ended for all batches. The batch and program are always specified on every PEC publication. PEC also stated that batch wise accreditation was necessary for regulation of graduates without which PEC would not be able to perform its functions.
30. PEC stated that its zero-visit policy was implemented in 2006. However, PEC made the zero-visit and accreditation procedure mandatory for all engineering programs in 2010. During zero-visit, a program's first and second year requirements are assessed, with emphasis on first year labs, faculty, facilities, etc. and this takes place six months prior to the launch of a program. It is at this stage that a program is given a 'green signal' to go ahead with operations. Subsequent to the first inspection and the green signal, in accordance with the PEC Manual, 'interim visits' take place every year. 'First Accreditation' is given to a program in its third year, and this accreditation is given for a period of one year. Once a green signal has been given to a specific intake batch, then the green signal is deemed to have been given for subsequent intake batches until PEC declares it otherwise.
31. Representative of PEC maintained that since 2010 accreditation has been in relation to the institute, its program, campus and batch, the details of which appear in the First Schedule of the PEC Act.

The first visit for accreditation is called the 'accreditation visit' whereas further visits for accreditation of subsequent batches are called 're-accreditation visits'. Accreditation and re-accreditation fee is PKR 100,000 whereas the fee for other visits (zero visit, interim visit and confirmation visit) is PKR 50,000.

32. It was clarified that PEC does not use the word ‘approved’, rather they use the words ‘green signal’ (after zero visit) and ‘permission’ to continue (after interim visits), and that PEC was consistent in using such terminology. In respect of the time for the accreditation process, PEC submitted that it is well known that the accreditation process takes 6 months. The date on which an institution applies for accreditation will matter since that date will determine when the institution will be visited for accreditation purposes.
33. Normally, the cut-off date is the 20th of the month, i.e. an institution applying before the 20th of a month will be visited in the next month. A report is issued regarding that visit, which will be shared with the institution, which may issue a rejoinder. Both the report and the rejoinder are discussed at the meeting of the Accreditation Committee, which is usually held every quarter but, depending on any impediments, may be held every 6 months. Based on the performance of an institution, accreditation could be granted for up to three years of subsequent batches.
34. PEC stated that engineering programs must meet a certain criteria, i.e. 70% of its syllabus contents must be engineering related, comprising of 40% core engineering subjects, and 30% non-core subjects. If these requirements are not met, PEC does not recognize the program as an engineering program.
35. Other factors that are taken into account are facilities and faculty. The word ‘remedial’ is used for programs that suffer deficiencies, and there is a separate accreditation process for such programs, which consists of conditional accreditation and PEC monitored and guided courses and examinations.
36. Those batches which are given the go-ahead for intake are accommodated by PEC. Deficiencies in the program are rectified by way of ‘conditional’ or ‘remedial’ accreditation, which entails further examinations conducted and monitored by PEC. As per the submissions of PEC the use of the word

“Engineering” with regard to programs implied accreditation by PEC. PEC has the authority to accredit and de-accredit programs and to register engineering graduates. PEC does not have the power to impose fines or close down institutions.

37. In order to better understand the accreditation procedure the PEC Act, PEC Manual and Rules were reviewed. Firstly, it is to be noted that the term ‘accreditation’ has not been defined under the PEC Act. However, Section 14 of the PEC Act states that PEC will constitute an Accreditation Committee for organizing and carrying out a comprehensive program for accreditation of engineering universities, colleges and institutions, etc. according to the criteria approved by the Governing Body in consultation with the HEC. Section 14 of the PEC Act gives the Accreditation Committee the power to accredit engineering institutions in accordance with the criteria approved by the Governing Board. This means that any criteria, which may include accreditation of batches, institutions and programs is possible as long as the Governing Body has approved it. Pursuant to the provisions of the PEC Act, the Engineering Accreditation and Quality Evaluation Committee (the “**EA&QEC**”) has been set up for the quality assessment of technical education. The EA&QEC has published the PEC Manual which states that the document is a complete set of publications pertaining to the accreditation process of EA&QEC. In view of this, it is clear that the EA&QEC has set out the procedure of accreditation of engineering programs in the PEC Manual.

38. The term ‘accreditation’ has been explained under Paragraph 2 of the PEC Manual as:

“Accreditation is a process of quality assurance, through which a program in an approved institution is critically appraised at intervals not exceeding three years to verify that the program meets the norms and standards prescribed by the PEC from time to time. Accreditation provides assurance that the academic aims and objectives of the program are pursued and achieved through the

resources currently available, and that the institution running the program has demonstrated capabilities to ensure effectiveness of the educational program(s), over the period of accreditation.”

So it is clear that accreditation as per the provisions of the PEC Manual is a process that involves appraisal of programs at intervals over a period of 3 years. However, when the term ‘accredited by PEC’ is used, in our considered view, it does not signify that accreditation is in process. In fact, such representation suggests that the process has been completed demonstrating and endorsing the capability of the institution to ensure effectiveness of the educational program meeting norms and standards prescribed by PEC. This view finds support from the ordinary dictionary meaning given in the Oxford Dictionary and in Blacks Law Dictionary:

“Definition of accredit

(of an official body) give authority or sanction to (someone or something) when recognized standards have been met...⁹

Accredit 1. to give official authorization or status to (2) recognize (a school) as having sufficient academic standards to qualify graduates for higher education or for professional practice...¹⁰”

Also, on review of the PEC Manual it has been found that Paragraph 2 of Chapter 1 states that PEC’s EA&QEC has adopted the policy of accrediting the program rather than the institution and may (a) grant accreditation for up to 3 years, or (b) kept pending for 6 months to remove shortfalls or (c) not grant accreditation. Having addressed the above issue, we deem it appropriate to examine other objections raised and submissions made in relation to the findings of the Enquiry report vis-à-vis accreditation for purposes of clarity. These include:

⁹ <http://oxforddictionaries.com/definition/english/accredit>

¹⁰ Blacks Law Dictionary –Seventh Edition

INTRODUCTION OF A NEW PROGRAM

39. In respect of the objections raised by the Undertakings regarding the findings of the Enquiry Report that a new program requires accreditation from PEC, we note that in fact the PEC Manual uses the term ‘initial accreditation’ under Paragraph 2 of Chapter 3. Therefore, this finding of the Enquiry Report being based on the provisions of the PEC Manual is not incorrect but it certainly, as clarified by PEC’s representative in terms of practice is referred to as granting ‘green signal’ and PEC needs to harmonize the provisions of the PEC Manual with its practice.

THE MANDATORY ASPECT

40. It has been claimed by the Undertakings that obtaining accreditation from PEC in respect of engineering programs is not mandatory while PEC claims that it is. In this respect it should be noted that Paragraph 7.2 of Chapter 1 of the PEC Manual states that it’s mandatory that institutions request PEC to carry out zero visit. Zero visit is a pre-requisite for introduction of a new program that is to be accredited subsequently at a later stage. It has also been stated in Paragraph 2 of Chapter 3 of the PEC Manual that as per bylaws of PEC, all graduates of engineering institution must be registered with PEC prior to seeking employment. Furthermore, Section 16 of the PEC Act states that only names of persons possessing accredited engineering qualifications will be entered in the register of PEC. Therefore, in our considered view these provisions inherently entail that engineering students must graduate from institutions that offer PEC accredited programs. Thus, accreditation is laid down as a mandatory requirement.

INTERNATIONAL PRACTICE

41. The Undertakings had also submitted that as per international best practices the process of accreditation for engineering institutions is voluntary and once accreditation has been granted in respect of a program, the university could claim

to be accredited. In this respect, the Commission found it necessary to review the process of accreditation in other jurisdictions in respect of engineering programs. Our review shows that out of 7 jurisdictions, which include, the United States, the United Kingdom, Canada, Singapore, Malaysia, India and Bangladesh, accreditation is mandatory only in one jurisdiction i.e. Malaysia. However, irrespective of the fact whether institutions offering engineering programs/degrees are not required to obtain accreditation, most institutions in practice seek accreditation. The reasoning behind the importance of the accredited status being recognized in these jurisdictions is seemingly the fact that an accredited program is meant to have met certain standards which equip the graduates with the necessary expertise for professional experience. This is of importance both to graduates and employers, as graduates are better prepared for professional work and employers have the surety that the graduates have met the standards prescribed by the accrediting body. Another reason for accreditation becoming more and more important is the acceptability at an international level and employment opportunities in the global market.

42. The common features in all these jurisdictions relating to accreditation are that accreditation is only granted in respect of individual programs and not to degrees, departments or educational institutions. Another common feature in the 7 jurisdictions that have been reviewed is that the accreditation procedure includes the submission by the educational institution of a self-study report, form or questionnaire to the accrediting body prior to the visit of the premises of the institution. The on-site 2-3 days visits are also a common feature of all the accreditation procedures. The status of accreditation is granted for a specified period of time, although the time varies in each of the jurisdictions, the institution has to apply for re-accreditation of the program on lapse of the status of accreditation. The purpose of the accreditation being granted for a specified period of time is to ensure that the programs that have been accredited meet the criteria and standards prescribed by the accrediting body from time to time. All

the features mentioned above are also common to the accreditation procedure of PEC.

43. The duration that the entire accreditation procedure takes is different in all the jurisdictions as is the duration for which the status of accreditation is granted. However, in all the jurisdictions reviewed the maximum duration for which the status of accreditation is granted is between 5-6 years, whereas the maximum duration for which PEC grants accreditation is a period of 3 years. As the procedure of accreditation is voluntary in most of the jurisdictions, another requirement in these jurisdictions is that prior to making an application for accreditation of a program, the program should already be running for a specified period of time. Another feature of the accreditation procedures in some jurisdictions that is distinct from that followed in Pakistan is that engineering institutions are required to apply for re-accreditation of a program prior to the expiry of the term for which accreditation had already been granted.

RELEVANCE OF WASHINGTON ACCORD

44. All the jurisdictions that have been reviewed are either signatories or provisional members of the Washington Accord. As Pakistan is also a provisional member of the Washington Accord, it is important to understand the relevance of it.
45. The Washington Accord is an international agreement that was signed between bodies responsible for accrediting engineering degree programs in 1989. To date the Washington Accord has a total number of 15 signatories which includes, Australia, Canada, Chinese Taipei, Hong Kong China, Ireland, Japan, Korea, Malaysia, New Zealand, Singapore, South Africa, Turkey, the United Kingdom, and the United States. The purpose of the Washington Accord is to recognize the substantial equivalency of programs accredited by such bodies and make recommendations that graduates of programs accredited by any of the signatory

bodies be recognized by the other bodies as having met the academic requirements for entry to the practice of engineering.

46. Under the Washington Accord, the signatories exchange information and review their respective processes, policies and procedures for granting accreditation to engineering academic programs, and have concluded that these are comparable. The Washington Accord comprises of the Agreement and the Rules and Procedures, pursuant to which the signatories agree that:

- (a) the criteria, policies and procedures used by the signatories in accrediting engineering academic programs are comparable;
- (b) the accreditation decisions rendered by one signatory are acceptable to the other signatories, and that those signatories will so indicate by publishing statements to that effect in an appropriate manner;
- (c) to identify, and to encourage the implementation of, best practices, as agreed from time to time amongst the signatories, for the academic preparation of engineers intending to practice at the professional level; and
- (d) to continue mutual monitoring and information exchange by whatever means are considered most appropriate.

The admission of a new signatory requires the unanimous approval of the existing signatories. During the provisional status which is granted before admission as a signatory, the accreditation criteria and procedures established by the applicant, and the manner in which those procedures and criteria are implemented are subject to comprehensive examination.

In our view, the above only illustrates the importance for the engineering students to graduate from institutions offering accredited programs; thereby opening up opportunities and providing access to the global market based on the simple criteria that qualifying from institutions offering accredited programs demonstrates capability to ensure effectiveness in compliance with the prescribed standards.

Whether the subject advertisements by the educational institution can be termed as deceptive marketing in terms of Section 10 and thus a violation under the Act?

47. Some of the Undertakings have argued that the act of applying to a university based on its advertisement of a particular program is not as simple or straightforward as buying a product based on its advertisement on a billboard. Thereby, distinguishing the advertisements made by educational institutions from advertisements by other undertakings. It was stated that the advertisements by the Undertakings were not marketing but an invitation. In this respect, attention is drawn to the findings of the Commission in the matter of Askari Bank Ltd., United Bank Ltd., MyBank Ltd. and Habib Bank Ltd.¹¹ (the “Banks Order”) where it was held that *“the language of section 10 does not require a finding to be made regarding the alleged effect of the advertisement on the decision making of the consumer. All that is necessary is whether false and misleading information was disseminated through the advertisements. This has also been the view taken in the Zong Order, wherein it was stated that, “for the purposes of deceptive marketing, actual deception need not be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency to deceive and capacity to mislead. ” While there is nothing to preclude the Commission from conducting an inquiry into the effect that an advertisement has on consumer behavior, there is no obligation under law to make such a determination”*.
48. As for the plea taken that students have access to additional information available on the websites and prospectus for verification of any claim, we will refer to the principle laid down in the Banks Order that just because a consumer can consult a representative of an undertaking, doesn’t mean this reduces the responsibility of the undertaking for information displayed in advertisements or permits such Undertakings to be economical or selective with truth. Also, in light of the findings of the Commission in the Zong-Ufone Order; the onus is on the undertaking to impart factually correct information to the consumer, therefore,

¹¹ http://www.cc.gov.pk/images/Downloads/banks_order_14-01-10.pdf

irrespective of the students being well informed, the Undertakings are held responsible not to disseminate false or incorrect information. Truth must bear out loud and clear. Its quality cannot be diluted in view of the credentials of the audience/consumer.

49. Most of the Undertakings also argued that as PEC itself published an annual notice in the news papers regarding the list of PEC accredited engineering programs without mentioning the specific batches, the Undertakings, therefore, could not be held to have acted in violation of the provisions of Section 10 of the Act. Upon review of the advertisement it is to be noted that the Undertakings that made these submissions were included in the list published by PEC. The language of the notice published regularly every year by PEC is reproduced below:

“List of accredited engineering programs with Pakistan Engineering Council

*This is for the information of students, parents, employers and general public that the following engineering programs being offered at various Universities/Institutions of Pakistan are accredited by Pakistan Engineering Council (PEC). It is the sole responsibility of the universities/institutions imparting any Engineering & Technology education to apply to PEC for accreditation of their Engineering Programs, failing which the students inducted/graduated from un-accredited programs would not be registered with PEC and shall not be eligible to undertake professional engineering work in Pakistan. Further batch wise detail of the following accredited engineering programs of respective engineering institution/university being updated periodically is given in the First Schedule on the PEC website: (**HYPERLINK** "http://pec.org.pk/schedule_first.aspx" http://pec.org.pk/schedule_first.aspx).*

Accreditation/assessment of engineering program is a continuous process and extended on periodic accreditation evaluation or otherwise. Accordingly the status of each engineering program is updated on PEC website and communicated to the concerned universities.”¹²

¹² Published on 18-06-2012

50. Although the notice given by PEC in the newspapers only provides a list of names of engineering institutions that have been accredited by PEC and does not specify the batches, it clearly states that batch wise details are to be obtained from the First Schedule available on its website. Hence, the notice advert published by PEC cannot be equated with the subject advertisements by the Undertakings. In this regard the Commission has already held in the Zong-Ufone Order that an advertisement has to be viewed as a whole. Reliance placed on case of Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471 by the Federal Trade Commission of USA (FTC) observing that:

"[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts."

Subsequently this view was upheld by the U.S. Court of Appeals in the matter of Beneficial Corp v. FTC, 542 F. 2d 611 (3rd Circuit. 1976) in the following terms:

"The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context." (at pg. 617)

This view was further approved by the U.S Court of Appeals in the case of American Home Products Corporation, A Delaware Corporation, Petitioner, v. Federal Trade Commission, Respondent, 695 F.2d 681 (1982-83 Trade Cases 65,081).

51. The Enquiry Report has concluded that the Undertakings have, *prima facie*, violated Section 10 (1) read with clauses (a) and (b) of sub-section (2) of Section 10 of the Act. It is to be noted that Section 10 (1) of the Act is a general provision and prohibits all Undertakings from entering into deceptive marketing practices. While sub-section (2) of Section 10 lists practices that shall be deemed to be deceptive for the purpose of Section 10. Clauses (a) and (b) of sub-section (2) of Section 10 of the Act that have been alleged to be violated, prohibit the

distribution of false or misleading information that is capable of harming the business interests of other undertakings and distribution of false or misleading information to consumers lacking a reasonable basis, related to price, character, method or place of production, properties, suitability of use or quality of goods. In the Zong-Ufone Order the Commission has explained the terms false and misleading as follows:

“I would like to discuss, first, the ambit of the terms ‘false’ and ‘misleading’ and attempt to distinguish the former from the latter for a better understanding of the two terms, although recognizing, that at times these may overlap. ‘False information’ can be said to include: oral or written statements or representations that are; (a) contrary to truth or fact and not in accordance with the reality or actuality; (b) usually implies either conscious wrong or culpable negligence, (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation. Whereas ‘misleading information’ may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”

52. In light of the above it is clear that statement or representation that is contrary to the truth or facts, even if made by negligence on behalf of an undertaking will be regarded as false. As has been submitted by many of the Undertakings themselves none of the Undertakings had been granted accreditation by PEC for intake of batch of 2011. However, these Undertakings had claimed in their advertisements of 2011 to have been accredited by PEC. This would mean that the representation made by the Undertakings that they have been accredited by PEC is false even if the Undertakings had no intention to deceive.

53. However, the case of Undertakings that had claimed to be approved, permitted or allowed instead of claiming to be accredited which has a distinct meaning under the PEC Act and the PEC Manual has to be differentiated.
54. While the term accreditation or even the terms used by the Undertakings in their advertisements may not have been clearly understood by the Undertakings themselves or the fact that the accreditation process has evolved over time and various aspects may not have been expressly addressed in the PEC Manual such as the concept of batch wise accreditation, the capping of number of students and use of the term ‘green signal’ for permitting new programs. Nonetheless, in the given facts, one thing is certain i.e. accreditation is time bound and the institutions could not have presumed that based on past accreditation of a program which is clearly specific to batches (in terms of the First Schedule of the PEC Act), the future intake of students for the said program would continue to enjoy ‘accredited’ status. Accordingly, they could not have advertised admission for the year 2011 by purporting to offer an accredited program which we find indeed false and /or misleading and in violation of Section 10. Even an application filed with PEC for re-accreditation by some of the engineering institutions would not entitle to make a claim to this effect.
55. Regarding the objection that whether the provisions of Section 10 (2) (b) of the Act are applicable in respect of services in addition to goods, the findings of the Commission in the Banks Order are relevant. It has been held in the Banks Order that:

“Firstly, at the outset it must be highlighted that Section 10 (1) is a broadly worded provision and applies to all undertakings without making a distinction between provision of goods and/or services. It prohibits all undertakings from entering into deceptive marketing practices. The definition of an Undertaking in section 2 (p) of the Ordinance is instructive and leaves no doubt that both goods and services are covered...”

17. Secondly, section 10 (2) lists when deceptive marketing practices shall be deemed to have been resorted to or continued by an Undertaking. Section 10 (2) read with 10 (2) (b) illustrates this deeming provision and is to be understood in two parts: the first part states that deceptive marketing practices shall be deemed to have been resorted to or continued by an undertaking through distribution of false or misleading information to consumers. Therefore again the use of the word “undertaking” makes it amply clear that distribution of false or misleading information to consumers by an undertaking (be it engaged in the provision of goods or services) is prohibited.

18. The latter half of section 10 (2) (b) goes on to give a few illustrative examples of what this false or misleading information to consumer could be: “including the distribution of information lacking a reasonable basis related to the:

- Price,*
- Character,*
- Method or place of production,*
- Properties,*
- Suitability of use, or*
- Quality of goods; ”*

However, this illustrative list of examples of false or misleading information to consumers is by no means exhaustive and does not preclude the possibility of a violation of Section 10 in instances other than those stated.”

For the same reasons, we hold that Section 10 (2) (b) is applicable to services offered/rendered by the subject Undertakings.

56. We need to appreciate that accredited status is of significance and holds value both for the engineering institutions as well as the students pursuing engineering programs, therefore, its use in the advertisement cannot be permitted in a casual manner. Institutions need to recognize their responsibility and exercise due caution while marketing/advertising their respective institutions and disseminating information in relation thereto. Such information ought not to be false, misleading or even potentially deceptive.

57. It is clear that none of the Undertakings had obtained accreditation for the intake of students in the year 2011 as has been stated by the Undertakings themselves. However, the submission of the Undertakings that it is not possible to obtain accreditation unless a batch reaches its third or final year is incorrect. This is only correct for a new program. However, as has been clarified by the representative of PEC and stated in the PEC Manual, the status of accreditation based on good credentials and performance, can be granted up to a maximum of 3 years. We can refer to the instance of CASE, which has been granted accreditation by PEC for intake of batches up to 2010 in respect of the Bsc Electrical Engineering Program. This status of accreditation has been granted in August 2012 even though the batch of 2010 will graduate in the year 2014.
58. We need to recognize that the Undertakings are institutions imparting knowledge to students that are responsible in moulding the future of the country. Keeping in view the role, the nature of mandate and the functions to be discharged by these institutions, there is perhaps a greater responsibility to demonstrate transparency and set good examples through their practices/behavior. The educational institutions are expected to and should endeavor to ensure that all information regarding the qualifications being offered by them are duly disclosed without any ambiguity and be made available to the students, to make an informed decision.
59. During the course of proceedings it also transpired that the fee charged for a four year program by the different Undertakings ranges from PKR 40,200/- to PKR 1,200,000/-. However, the minimal fee of PKR 40,200/- for a four year program is only being charged by one engineering institution. The average fee charged by the 27 Undertakings is PKR 502,144/-. Assuming that each Undertaking accepts 40 students per year as PEC generally caps the number of students, the approximate number of students that graduate annually from the 27 subject Undertakings is 1080. The estimated proceeds generated from the students graduating from only these Undertakings would on an average approximately be over PKR 500 Million for a four year program. While the fee generated by the subject Undertakings is

substantial, the fee/cost for accreditation is minimal i.e. PKR 100,000 to 200,000 only. This figure of average fees is only relating to the subject 27 Undertakings, while there are a large number of educational institutions that are offering engineering programs. In our view, the financial impact on the students and their parents is substantial and before they make such investment in their career, they deserve to be provided access to all due disclosures for making an informed decision.

60. Also, keeping in view the Washington Accord which is an important step towards opening up opportunities for qualified engineers in the international market and providing access to the global market possible for qualified engineers in Pakistan, it is critical to recognize that any claim purporting to enjoy an accredited status holds a significant value for the students as well as their parents who incur the costs for pursuing such qualification with concerned institutions. Non-accreditation acts as a disqualification for the students who may become engineers, as they would not be able to compete with engineers that have qualified in other jurisdictions that are signatories to the Washington Accord.

61. Looking at the significance of such claim through advertising, while at the same time taking into account the prevailing facts and circumstances, we deem it appropriate not to treat all the Undertakings in the same way . In our considered view these Undertakings can broadly be grouped into three different categories:

(1) Undertakings that had claimed to be ‘approved’ ‘permitted’ or ‘allowed’ instead of claiming to be accredited. For the purpose of Section 10 it is relevant to examine whether these claims are false or misleading to the consumer. As these terms are not defined they may create confusion for the consumers - making such claims potentially deceptive under Section 10. The Undertakings falling under this category are:

- (a) Abasyn University
- (b) Isra University
- (c) Sukkur IBA
- (d) Swedish College of Engineering and Technology
- (e) University of Lahore
- (f) Ziauddin University
- (g) IIEE

Each of these 7 Undertakings listed above, use terms such as ‘approved’, ‘recognized’ ‘permitted’ or ‘allowed’. The Commission is of the view that the terminology used for a new program that has been given a green signal by PEC needs to be standardized. Therefore, these Undertakings instead of using different terms should use the term ‘green signal’, which is the term used by PEC in advertisements relating to admissions into an engineering program. It has been observed that for instance Isra University on its website has disclosed the status of approval and interim visit and while such disclosures are appreciated, the terminology should be the same that is used by PEC. Furthermore, these Undertakings are directed by the Commission to place details of the status of each of their programs, which should include the date at which the engineering program was given a green signal by PEC and in case an interim visit has been conducted the date and/or direction given by PEC.

The Bench finds that these Undertakings may have potentially misled the consumers by making the claims in their advertisements, but keeping in view the facts and circumstances, we are of the considered view that the interest of justice would be served if these Undertakings are reprimanded and they give written commitments to make due disclosures to the student body in terms of this order, in general and in particular as stated in Paragraph 63 below for future advertisements inviting admissions to engineering programs. The parties have also assured full cooperation and expressed their willingness to comply with any direction of the Commission in this regard, therefore, a lenient view is being taken as the primary objective with respect to the enforcement of Section 10 is to bring about corrective behavior amongst Undertakings and this Commission has so far

taken a compliance oriented approach; which in our considered view is also warranted in the present case with the exception of few Undertakings.

(2) Similarly, for the same reasons, in cases belonging to the second category i.e. where the Undertakings had ensured/achieved accreditation prior to graduation of the students and none of the students who have graduated so far are without an accredited program degree and are thus eligible for registration with PEC as qualified engineers: we are taking a lenient view even in respect of such Undertakings. However, we must clarify that we have no doubt that the advertisements given by these Undertakings were deceptive as the term ‘accredited by PEC’ was expressly used while advertising and inviting admission for 2011 programs which is factually incorrect. Therefore, the written commitments to rectify the behavior and disclosure requirements for future advertisements as stated in paragraph 61(1) read with paragraph 63 would equally be applicable to these Undertakings namely:

- (a) PAF-KIET;
- (b) FAST;
- (c) Usman Institute of Technology;
- (d) Sir Syed;
- (e) University of Central Punjab;
- (f) Iqra Univeristy;
- (g) Sarhad University;
- (h) Foundation University;
- (i) CECOS;
- (j) Balochistan University;
- (k) NFC;
- (l) UMT;
- (m) Bahria;
- (n) CASE;
- (o) Hamdard.

(3) As for Undertakings in the third/last category i.e. where the students despite graduation have not received an accredited program degree so far. We note that the fee being charged by such Undertakings ranges between PKR 400,000/- to PKR 800,000/- for a four year program and most of these

Undertakings have not obtained accreditation for intake of batches after 2005, though University of Faisalabad and Wah Engineering College have taken it for the intake of students in 2007. This means the graduates from these Undertakings between the years 2009 to 2012 as the case may be are not eligible to be registered with PEC as engineers as the engineering program degree obtained by them has not been accredited so far. We find this too serious a violation to condone without penalty. However, in the given circumstances, we are restricting the penalty to a sum of PKR 5 Million for each of the Undertakings named below:

- (a) University of Faisalabad;
- (b) University of South Asia;
- (c) Wah Engineering College;
- (d) SFDAC;
- (e) IBM.

62. It needs to be appreciated that for any financial loss or missed career opportunities caused to the students or their parents, the proper course of action to be pursued would be compensation before the courts of competent jurisdiction.

63. In so far as compliance with the provisions of the Act is covered, we hereby direct that the following is a minimum standard for mandatory disclosure for the advertisements published in the newspapers or any other document as well as all electronic communication/ advertisement made available on the website of all undertakings offering engineering programs. Such disclosure must be conspicuously printed and displayed and as the case may be, include express and unambiguous information in relation to:

- (a) The intake of batches up to the year for which accreditation has been granted by PEC in respect of each of the programs;
- (b) The status of application for re-accreditation of the existing program(s) (if applicable); and
- (c) In case of a new program(s), its status and as to when the 'green signal' was granted.

64. PEC being the regulatory body may consider further disclosure requirements for all engineering institutions, in addition to the minimum standards set out by this Commission in this order. PEC is further directed to issue clear and simplified guidelines for institutions offering engineering programs in respect of the accreditation procedure. These guidelines should be widely disseminated and should include all relevant information provided in the PEC Act and the PEC Manual and should also cover matters that have evolved as a result of the practice of PEC. In this regard, we deem it appropriate to observe that PEC being the only accrediting body in Pakistan for the engineering institutions has to remain conscious that its monopoly in the market of granting accreditation has to be transparent and above board. To prevent any likely abuse of this position there has to be a 'code of conduct' by which these engineering institutions are facilitated in complying with due process of accreditation in an efficient manner.

65. All subject Undertakings are hereby directed to file their written commitments to comply with the order, in letter and in spirit and to ensure that any or all future advertisements for their engineering programs shall make all necessary disclosures in terms of this order. The written commitments are to be filed with Registrar of the Commission within a period of One (1) Month from the date of issuance of this order. If the violation of the order of the Commission is a continuing one, the Undertaking guilty of such violation shall be liable to pay a penalty of PKR 100,000/- everyday in terms of Sub-Section 3 of Section 38 of the Act.

(Rahat Kaunain Hassan)
Chairperson

(Abdul Ghaffar)
Member

(Dr. Shahzad Ansar)
Member

Islamabad, the 01 of March, 2013.