



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN  
IN THE MATTER OF  
M/S CHINA MOBILE PAK LIMITED  
(File No. 2(1)/Dir.(L)/CCP/2008)  
&  
M/S PAKISTAN TELECOM MOBILE LIMITED  
(File No.2(6)/Dir(L)/CCP/2008)**

Date of hearing:	February 02, 2009 & February 04, 2009
Present:	<b>Ms. Rahat Kaunain Hassan</b> Member (Legal)
Present for M/S China Mobile Pak Limited: (‘CMPak’)	<b>Mr. Sardar Ejaz Ishaq Khan</b> Advocate High Court <b>Syed Javaid Akbar</b> Advocate High Court <b>Mr. Mohammad Naeem Ashraf</b> Advocate <b>Mr. Aslam Minhas</b> Company Secretary
Present for M/S Pakistan Telecom Mobile Limited: (‘Ufone’)	<b>Mr. Ijaz-ul-Hassan</b> and <b>Syed Reza Ali</b> , Advocates of Cornelius Lane and Mufti representing M/s Pakistan Telecom Mobile Limited <b>Mr. Akbar Khan</b> GM Marketing, <b>Syed M. Irfan</b> Senior Manager Legal Affairs, <b>Asher Khan</b> Chief Marketing Officer, <b>Asif Saeed Malik</b> Head of Marketing <b>Hajra Faruk</b> Head of Strategy and Marketing of Ufone

## **ORDER**

1. This Order shall dispose of the proceedings arising out of Show Cause Notices No. 27/2008-09 and 28/2008-09 issued to M/s China Mobile Pak Limited (hereinafter referred to as '**CMPak**') and M/s Pakistan Telecom Mobile Limited (hereinafter referred to as the '**Ufone**'), respectively for *prima facie* violation of Section 10 of the Competition Ordinance, 2007 (hereinafter referred to as the '**Ordinance**') which prohibits deceptive marketing practices.

### **BRIEF FACTS IN THE MATTER OF 'CMPak'**

2. CMPak is an undertaking as defined under clause (p) of sub-section (1) of Section 2 of the Ordinance. It is engaged in the business of providing mobile telecommunication services and offering various package plans to consumers in Pakistan providing wide coverage, voice and data communication services, as well as a wide range of tariff options to choose from.
3. The Competition Commission of Pakistan (hereinafter referred as "**CCP**") took *suo motto* notice of the advertisements of CMPak where under its '*8 Any per call*' offer was advertised on various media channels, in which, it was publicized that, the users of ZONG network can now call to one number of any network at '*8 Any per call*' and they can change that number anytime.

4. The script of advertisement, both in English and in Urdu, is reproduced below:

**People claim of simplicity and yet give you half the truth. Only ZONG gives you the full truth at half the price. Now make calls to any other mobile network for 8 aanaay i.e. 50 paisas per call and you can change that number any time you want. You will have to pay 40 paisas extra for the first minute only.**

**To avail this offer please dial 907 from your ZONG number and say it all!**

آپ کو ایک مزے کی بات بتاؤں۔ جھوٹ چاہے بڑھائی میں بولا جائے یا ڈھٹائی سے بولا جائے وہ جھوٹ ہی رہتا ہے۔  
ایک روپے میں ایک منٹ دیکھا ہے نا آپ نے! چارج ہوتا ہے ایک روپیہ چالیس پیسے۔ بغیر بتائے۔ اور وہ بھی صرف اسی  
نیٹ ورک پہ کال کا۔  
کیا ہر نیٹ ورک پہ کال کرنے کے لئے الگ کنکشن لیں۔  
جی نہیں اب زدنگ سے کریں آٹھ آنے کی کال۔  
کسی بھی نمبر کسی بھی نیٹ ورک پر کبھی بھی اور جب چاہے نمبر چینج کریں۔  
زدنگ آٹھ آنے کی کال۔  
صرف پہلے منٹ کے چالیس پیسے ایکسٹرا تو ریٹ آدھابا بات دگنی۔  
آفر استعمال کرنے کیلئے 907 ڈائل کرو اور سب کہہ دو۔

5. CMPak was asked vide letters dated September 4, 2008 and October 7, 2008 to provide the details of the advertisement of the Offer, in order to verify that no misleading information is given to consumers through the aired advertisement.
  
6. CMPak through its letter dated October 13, 2008 submitted the following information along with the script of the advertisement:
  - a. ...‘8 Anay per call’ is an offer on our package ‘12 Anay’. The offer can be subscribed by dialing 907;
  - b. The ‘8 Anay’ offer allows customers to call one (1) number of any other GSM operators of Pakistan for 50 paisas per 30 seconds;
  - c. Call set up charges of 40 paisas is charged per call;
  - d. PKR 15 + tax are charged for each addition or modification of offer number.
  
7. The Office of Fair Trading (the ‘OFT’) of CCP found that the information provided by CMPak relating to ‘8 Anay per call’ offer was not in conformity with the advertisements. Since, CMPak *prima facie* appeared to be distributing false or misleading information to customers/consumers and does not appear to disclose clearly to customers/consumers the true terms and conditions of the ‘8 Anay per call’ offer; therefore, a Show Cause Notice was issued on January 13, 2009; to CMPak, *inter alia* in terms of the following:

4. *WHEREAS, the Undertaking has also submitted the script of the advertisement along with their reply dated October 13, 2008, the details of '8 Anay per call' offer provided in the reply of the Undertaking and information in the script of the advertisement aired on various TV channels are not in conformity with each other thus such advertisement prima facie appears to be distributing false or misleading information to customers/consumers lacking a reasonable basis related to the price, character and/or suitability for use of the product advertised in terms of clause (b) sub-section (2) of Section 10 of the Ordinance as:*

- a. there is no mention of the duration of call, on which '8 Anay' will be charged by the Undertaking in the script of the advertisement;*
- b. there is no condition in the script that '8 Anay per call' offer is valid only on '12 Anay' package;*
- c. there is no mentioning in the script that PKR 15 + tax will be charged for each addition or modification of offer number;*
- d. the last slide attached with the script is flashed on the TV for not more than 2 seconds, which does not appear to be a reasonable time to inform the customers about the*

*important feature of the package i.e., 8 Anay (50 paisas) to be billed for a call of 30 second duration.*

8. *WHEREAS in view of the foregoing the Commission is satisfied that there has been or is likely to be a violation of sub-section (1) of Section 10 of the Ordinance in terms of clauses (a) & (b) of sub-section (2) of Section 10 of the Ordinance;*

8. It was also alleged in the Show Cause Notice that, the advertisement *prima facie* appears to be distributing false or misleading information to customers/consumers, lacking a reasonable basis related to the price, character and/or suitability for use of the product advertised in terms of clause (b) sub-section (2) of Section 10 of the Ordinance.

**BRIEF FACTS IN THE MATTER OF ‘Ufone’**

9. Ufone is a wholly owned subsidiary of Pakistan Telecommunication Company Limited established to operate cellular telephony. The company commenced its operations, under the brand name of Ufone from Islamabad on January 29, 2001.
10. Ufone is an Undertaking as defined under clause (p) of sub-section (1) of Section 2 the Ordinance. Ufone is engaged in the business of providing mobile telecommunication services and offering the consumers in Pakistan voice and data communication services as well as a wide range of tariff options to choose from.

11. Ufone advertised one of its packages 'Uwon' the script of the advertisement and the news paper advertisement of the Ufone's Uwon package is reproduced herein below:

(پہلی آواز)۔ یہ یونون کے سب سے کم کالنگ ریٹس کا کیا مطلب ہے؟ میں بڑے دنوں سے سن رہا ہوں کہ Uwon سب سے سستا کچھ کیسے ہے۔

(دوسری آواز)۔ بتاتا ہوں۔ اب جو میں اپنے یونون سے کال کرنے جا رہا ہوں یہ دنیا کی سب سے سستی کال ہوگی دیکھ۔۔۔۔۔

(موسیقی)

۔۔۔۔۔ دنیا کی سب سے

۔۔۔۔۔ سستی ترین

۔۔۔۔۔ کال کرنے جا رہا ہے

۔۔۔۔۔ یہ بندہ

۔۔۔۔۔ نہ اس ملک کی

۔۔۔۔۔ نہ ایشیا کی

۔۔۔۔۔ یہ تو دنیا کی سب سے سستی کال ہے۔۔۔۔۔

(س پر وہ آواز)

اپنی یونون ہم حاصل کریں اور کسی بھی نیٹ ورک پر دنیا کے سب سے سستے کالنگ ریٹس پر کال کریں۔

(خاتون): ہیلو۔۔۔۔۔

(دوسری آواز): ہیلو۔۔۔۔۔

(خاتون):۔۔۔۔۔ تم پھر کسی کو انتہائی سستی کال کر کے دکھا رہے ہو۔ Show Of

(دوسری آواز): سستی کال مہنگی پڑے گی۔

(س پر وہ آواز)

۔۔۔۔۔ یونون تم ہی تو ہو۔۔۔۔۔

**Uwon**  
یون کال سب سے سستی کال پیکیج

**دنیای سب سے سستی کال**

**1**  
یوفون سے یوفون  
اب ہر منٹ روپیہ

یون Uwon کچھ قیمت پر بلا حد آفری، اب صرف 1 روپیہ میں، اور کسی اور سے زیادہ کم صرف 1.60 روپیہ میں۔  
7 روزہ آفر کی مدت میں اور کسی اور سے کم سے کم 1 منٹ کال میں سے فائدہ اٹھائیں۔  
آپ کی کال کی قیمتیں اب Uwon پیکیج پر منتقل کر دی گئی ہیں۔  
موجودہ صارفین Uwon پیکیج حاصل کرنے کے لیے 444 پر کال کریں۔

www.ufone.com سے 333 تک 11-333-100 سے 333 تک

12. CCP took *suo motto* notice of the advertisement and issued a letter dated October 17, 2008 and a reminder dated November 3, 2008 to Ufone to clarify and furnish information regarding the advertisements and tariff of Ufone's *Uwon Package*, in which the information was disseminated to consumers that they can now make calls to other networks at the cheapest rates not in Pakistan, not in Asia but world wide.



13. On November 2, 2008; M/s Cornelius, Lane & Mufti, sent a reply to the aforementioned letters of CCP, for and on behalf of Ufone, the relevant portions of the submissions contained in the said letter are as under:

*“...[t]his package offered by the undertaking is the cheapest as per comparison done on August 17, 2008 for prepaid minute package without any time of day, friends and family, pre-committed charges, limited time expiry and daily monthly charges...*

*...[t]he advertisement is merely an invitation to treat and in no way purported to be an offer to the general public to subscribe to the undertaking’s connection...*

*... [I]n addition, all advertisements and brochures aired or published by the undertaking carry appropriately worded disclaimers and exclusions of liabilities in congruence with legal requirements...*

*We reiterate that the advertisement in no way whatsoever purports to distribute false or misleading information to consumers. The statement in the advertisement is a statement of fact and as per a comparison it is fundamentally clear that the*

rates offered by PTML are the lowest as compared to other telecom service providers.”(Underlining is ours)

However, along with the reply neither any document nor any evidence in support of the submissions was provided.

14. Ufone vide its letter dated November 07, 2008 submitted the rates of the *Ufone-Uwon Package*, which are as follows:

<b>Call details</b>	<b>Exclusive of tax</b>	<b>Inclusive of Tax</b>
Ufone to Ufone (On-net)	Rs. 1/min	Rs. 1.21/min
Ufone to other Networks and PTCL	Rs. 1.6/min	Rs. 1.94/min

Subsequently, on December 19, 2008 at 10:30 a.m. upon request made by Ufone, a meeting was held between the Director (Law/OFT) and the representatives of Ufone namely, Ms. Maria Tahir, Mr. Ali Ikram, Syed Hussain Hamid and Mr. Raza Ali (Legal Adviser). However, no satisfactory response was given by the Ufone team.

15. Since, the claims made by Ufone of its advertised *Uwon package* and the actual facts, appeared to be contradictory and misleading; a Show Cause Notice was issued on January 15, 2009 to Ufone, inter alia in terms of the following:

2. *WHEREAS, the Undertaking through various media channels is advertising in Urdu language its 'Uwon' package, in which, it is publicizing to the effect that,*

*a. the Uwon package offers the cheapest calling rates not only in Pakistan, not only in Asia but in the world;*

*b. the users of 'Ufone – Uwon' package can call on any network at the cheapest call rates;*

*c. Ufone packages provide the best connectivity services to its customer as compared to other mobile operators;*

7. *WHEREAS, upon comparison of the call rates offered by some of the mobile operators through various packages with the Ufone – Uwon package, in terms of the following paragraph, (as provided on the website of Pakistan Telecommunication Authority as well as that of the concerned mobile operators) it appears that, the advertisement and the submissions made by the Undertaking are not in conformity with the facts purported in the advertisement and appear to be in effect misleading and false in terms of Section 10 of the Ordinance;*

8. *WHEREAS, 'Telenor Talkshawk 30 Second' package and 'Zong – 8 Any per call' offer appear to be offering lower rates in comparison with the Undertaking's Ufone-Uwon Package, as can be seen in the table below:*

**Telenor talkshawk 30 Second tariff**

<i>Call details</i>	<i>Exclusive of tax &amp; Inclusive of Interconnect and long distance charges.</i>	<i>Inclusive of Tax</i>
<i>Telenor to Telenor (On-net)</i>	<i>Rs. 0.75/30 sec (Rs. 1.50/min)</i>	<i>Rs. 1.815/min</i>
<i>Telenor to other mobile operators/PTCL (Of-net)</i>	<i>Rs. 0.75/30 sec (Rs. 1.50/min)</i>	<i>Rs. 1.815/min</i>
<i>Friends &amp; Family Telenor-Telenor</i>	<i>Rs. 0.45/30 sec (Rs. 0.90/min)</i>	<i>Rs. 1.089/min</i>
<i>International Call</i>	<i>Rs. 0.75/30 sec (Rs. 1.50/min)</i>	<i>Rs. 1.815/min</i>

**ZONG 8 Anay per call tariff**

<i>Call details</i>	<i>1<sup>st</sup> minute</i>	<i>2<sup>nd</sup> minute onwards</i>
<i>Local &amp; Long distance Calls to Same Network</i>	<i>Rs. 1.82/min</i>	<i>Rs. 1.82/min</i>
<i>Local &amp; Long distance Calls to Fixed-line Network</i>	<i>Rs. 1.69/min</i>	<i>Rs. 1.21/min</i>

9. *WHEREAS, in the view of foregoing, the Undertaking prima facie appears to be distributing false or misleading information to customers/consumers lacking a reasonable basis related to the price, character and/or suitability for use of the product advertised in terms of clause (b) sub-section (2) of Section 10 of the Ordinance as:*

*a. The advertisement does not duly disclose the consumers about the duration of call at which the cheapest call rates will be applicable;*

*b. the claim of the Undertaking through its advertisement that, call rates of the Ufone – Uwon package are not the cheapest in Pakistan, not in Asia but in the world, appears to be in contrast with the actual facts purported in the advertisement; as cheapest call rates by the undertaking in advertisement are not the cheapest, even in Pakistan, when compared to the call rates of the packages of other mobile operators of Pakistan, provided on the websites of the concerned mobile operators and that of Pakistan Telecommunication Authority;*

*c. The advertisement aired on various TV channels does not duly disclose appropriately worded disclaimers;*

*d. in addition to the above, the Undertaking does not disclose clearly to customers/consumers the true terms and conditions of the package/services. For instance, the fact that the advertised rates and Uwon package pertains only to the prepaid services and not to the postpaid service is not disclosed;*

10. *WHEREAS, it appears that the Undertaking is giving false and misleading information to its customers which is likely to harm the business interests of other undertakings in terms of clause (a) sub-section (2) of Section 10 of the Ordinance;*

12. *WHEREAS, in view of the foregoing the Commission is satisfied that there has been or is likely to be a violation of sub-section (1) of Section 10 of the Ordinance in terms of clauses (a) & (b) of sub-section (2) of Section 10 of the Ordinance;*

### **HEARING IN THE MATTER OF ‘CMPak’**

16. For the disposal of the Show Cause Notice issued to CMPak, the matter was fixed for hearing on February 02, 2009 at 11.00 a.m. in Islamabad. Accordingly, Sardar Ejaz Ishaq Khan, Syed Javaid Akbar and Muhammad Naeem Ashfar of AQLAAL

*Advocates and Corporate Counsels* representing CMPak along with Mr. Aslam Minhas, Company Secretary of CMPak, appeared before CCP and argued the case. It was submitted that although the advertisement does not mislead the customers on any aspect, yet CMPak is willing to address all the concerns of CCP. They further submitted that since, the Ordinance is a new law and there are no guidelines or regulations in existence to provide guidance to the undertakings in this regard (*vis a vis* Section 10 of the Ordinance), therefore, CMPak may not be penalized. Moreover, it was emphasized that the advertisement by no means was intended to mislead the consumers.

17. While the conciliatory and compliance oriented approach assured by the counsel of the CMPak needs to be appreciated, it is pertinent to recognize that the main issue in this matter is to determine the misleading aspect of the subject advertisement i.e. whether, the advertisement is of such nature, that, it misleads the consumer. The important factors that need consideration for such determination, in relation to the subject advertisement, are:

- (i) duration of call at which the advertised rates are applicable;
- (ii) actual call rates applicable to the calls in '*8 Anay per call*' offer;  
and
- (iii) omission of certain features applicable to the '*8 Anay per call*' offer in the advertisement.

18. Before I proceed to address the issue it will be helpful to explain by way of background that OFT in CCP has been established to create a business environment in Pakistan that is based on healthy competition in order to protect consumers from anti-competitive practices. OFT has been established with the aim of enhancing the link between CCP and the consumers and to establish a focal point for identifying and providing solutions to issues which pose or may potentially pose problems for the consumers arising out of deceptive marketing practices. The OFT's mandate is to oversee and act as a watch dog for misleading and deceptive marketing practices as enumerated in Section 10 of the Ordinance. It aims at paving the way to create consumer awareness with the objective of making markets function better for consumers and to ensure fair dealing in businesses. The focus is on the protection of consumers from deceptive marketing practices to ensure provision of adequate information to enable informed consumer choices.

19. Section 10 of the Ordinance prohibits deceptive marketing practices, which is reproduced herein below:

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

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



- (a) the distribution of false or misleading information that it is capable of harming the business interests of another undertaking;*
- (b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;*
- (c) false or misleading comparison of goods in the process of advertising;*
- or*
- (d) fraudulent use of another's trademark, firm name, or product labelling or packaging.*

20. In application of Section 10 of the Ordinance, the first important step is to examine the scope and ambit of the terms 'false' and 'misleading'. Since these terms are not defined under the Ordinance I would revert to the ordinary dictionary meaning of the terms 'false' and 'misleading'. According to the New Oxford Dictionary of English, 'false' means "*not according with truth or fact; incorrect, or appearing to be the thing denoted; deliberately made or meant to deceive; or illusionary; not actually so*" and 'misleading' means "*giving the wrong idea or impression*". Under the Black's Law Dictionary 7<sup>th</sup> Edition 'false' means "*untrue, deceitful, not genuine*" whereas 'misleading' means "*delusive; calculated to be misunderstood*".

21. In the UK, Regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008 elaborates the purview of misleading actions.

***“Misleading actions***

- (1) *A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).*
- (2) *A commercial practice satisfies the conditions of this paragraph—*
- (a) *if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and*
- (b) *it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.*
- (3) *A commercial practice satisfies the conditions of this paragraph if—*
- (a) *it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or*

*(b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if—*

*(i) the trader indicates in a commercial practice that he is bound by that code of conduct, and*

*(ii) the commitment is firm and capable of being verified and is not aspirational,*

*and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.*

*(4) The matters referred to in paragraph (2)(a) are—*

*(a) the existence or nature of the product;*

*(b) the main characteristics of the product (as defined in paragraph 5);*

*(c) the extent of the trader's commitments;*

*(d) the motives for the commercial practice;*

*(e) the nature of the sales process;*

*(f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;*

- (g) *the price or the manner in which the price is calculated;*
  - (h) *the existence of a specific price advantage;*
  - (i) *the need for a service, part, replacement or repair;*
  - (j) *the nature, attributes and rights of the trader (as defined in paragraph 6);*
  - (k) *the consumer's rights or the risks he may face.*
- (5) *In paragraph (4)(b), the “main characteristics of the product” include—*
- (a) *availability of the product;*
  - (b) *benefits of the product;*
  - (c) *risks of the product;*
  - (d) *execution of the product;*
  - (e) *composition of the product;*
  - (f) *accessories of the product;*
  - (g) *after-sale customer assistance concerning the product;*
  - (h) *the handling of complaints about the product;*
  - (i) *the method and date of manufacture of the product;*

- (j) *the method and date of provision of the product;*
- (k) *delivery of the product;*
- (l) *fitness for purpose of the product;*
- (m) *usage of the product;*
- (n) *quantity of the product;*
- (o) *specification of the product;*
- (p) *geographical or commercial origin of the product;*
- (q) *results to be expected from use of the product; and*
- (r) *results and material features of tests or checks carried out on the product.*

(6) *In paragraph (4)(j), the “nature, attributes and rights” as far as concern the trader include the trader's—*

- (a) *identity;*
- (b) *assets;*
- (c) *qualifications;*
- (d) *status;*
- (e) *approval;*

*(f) affiliations or connections;*

*(g) ownership of industrial, commercial or intellectual property rights;*

*and*

*(h) awards and distinctions.”*

‘Misleading advertisement’ on UK’s OFT’s website is as follows:

*“An advert is misleading if it deceives or is likely to deceive its audience and affect their economic decision-making. This also applies if it harms or is likely to harm a competitor of the organisation placing the advertisement.*

*An advert will be likely to affect the economic decision-making of readers if, for example, it persuades them to part with money.*

*A misleading advertisement can be a spoken statement - eg, given by a sales representative, in person or over the phone. It does not have to be in writing.*

*An advert can be deceptive in various ways, for example, if it:*

*contains a false statement of fact - this may be possible to prove or disprove by evidence conceals or leaves out important facts promises*

*to do something but there is no intention of carrying it out creates a false impression, even if everything stated in it may be literally true.”*

22. The Federal Trade Commission (FTC) is U.S.’s consumer protection agency. The FTC's Bureau of Consumer Protection works for the Consumer to prevent fraud, deception, and unfair business practices in the marketplace. Section 5 of the FTC Act declares unfair or deceptive acts or practices, unlawful. Section 12 specifically prohibits false ads likely to induce the purchase of food, drugs, devices or cosmetics. Section 15 defines a false ad for purposes of Section 12 as one which is "misleading in a material respect." Since numerous FTC and judicial decisions defined and elaborated on the phrase "deceptive acts or practices" under both Sections 5 and 12, the US FTC decided to issue a single definitive statement of FTC's view considering it to be useful to the public. They did so by reviewing the decided cases and synthesizing important principles of general applicability *‘to provide a concrete indication of the manner in which the Commission will enforce its deception mandate’*. The summary of these principles is reproduced as under:

*“Certain elements, under gird all deception cases. **First**, there must be a representation, omission or practice that is likely to mislead the consumer. Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or*

*systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations*

***Second**, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.*

***Third**, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary.*

*Thus, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."*

23. The above serves as a useful guide in throwing light on the subject. While the scope of deceptive practices may be very wide at present, I would like to narrow



down and focus on its essentials step by step. In my considered view Section 10 of the Ordinance talks of deceptive marketing practices which without prejudice to the generality of the provision broadly includes distribution:

- (a) of 'false information', or
- (b) of 'misleading information';
- (c) to consumers, or
- (d) fraudulent use of another's trade mark, firm name or product labelling or packaging.

At present we are not concerned with (d) above and shall therefore focus only on (a) to (c). 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.

24. Now it is significant to address and understand who is the ‘consumer’ under Section 10 of the Ordinance? Would the concept of ‘consumer’ be similar to the ‘ordinary prudent man’ concept under contract law or is it different in any manner. In this regard, I would again refer to other jurisdictions in particular, US and EU, in order to understand the concept of ‘consumer’. These are established jurisdictions not only in competition law but also in the consumer protection laws. However, I must at the outset point out that our test of ‘consumer’ in this regard, may be at variance, as at times, we have to draw upon the factors peculiar to us, in order to implement the law in letter and spirit.

25. The EU ‘average consumer test’ was criticized by *Rossella Incardona Æ Cristina Poncibo*<sup>1</sup> as “*the average consumer test reflects the economists’ idealistic paradigm of a rational consumer in an efficient marketplace. This notion may be useful for economists’ calculations and projections, but departs from the unpredictable realities of individual human behavior and is hardly an appropriate standard for legislative or judicial sanctions.*”

...

“*Generally, consumers do not have the time and resources at their disposal to acquire and process sufficient information for rational decision-making. It is*

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<sup>1</sup> The average consumer, the unfair commercial practices directive, and the cognitive revolution published online: 27 February 2007 Springer Science + Business Media B.V. 2007

*impossible for consumers to devote all their intellectual, psychological, and physical resources as well as their time to the gathering and processing of information merely so that their choices can meet an abstract economic notion. Even well-informed consumers of a high intellectual and educational level, who would, at least in theory, be ideally suited for rational market behaviour, may often base their decisions on custom and feelings rather than on an analytical process. Extensive, multi-dimensional information leads to a significant decrease in the quality of consumer choice. Different types of consumers possess different information processing and perception abilities.”*

26. It has been argued that the exclusion of a definition of ‘average consumer’ from the Unfair Commercial Practice Directive may have left room for the EU national courts to take a more realistic assessment of the overall commercial practices as required under Article 6 of the directive. This might mean taking into account the consideration that most consumers do not read advertisements and commercial communications carefully, in an observant and circumspect way, but rather look hastily at the heading and the pictures. The average consumer might, in some situations, act as a casual observer and therefore include elements of hasty observations in the concept of the ‘average consumer’.

27. *Rossella Incardona* *Æ* *Cristina Poncibo* further criticizes that “*the over-demanding average consumer test conflicts with the overall system of EU*

*consumer law resulting in many forms of weak paternalism<sup>2</sup>. The disclosure obligations, “cooling-off” periods and the specific information required for certain sales, are based on the idea that, in the heat of the moment, consumers might make ill-considered or improvident decisions. The standard justification for these regulations is that they will protect consumers from unscrupulous, high-pressure and deceitful sellers and lenders whilst simultaneously fostering a more competitive marketplace and enhancing consumer confidence. Aware of information asymmetries and of the fact that consumer often act impulsively or in a way that they later regret, EU legislation does not block their choices, but ensures a period for sober reflection. This benevolent attention to consumer weakness is not present in the average consumer test.”*

28. Taking peculiar circumstances of the Pakistani consumer into account, more so in the telecom industry where the consumers range is of widest amplitude, I find a lot of merit in what is stated above and fully agree that we should not “*favour a return to unregulated laissez-faire marketing that would transfer the burden of evidence from the seller, who has the advantage of intimate knowledge of the product, to the buyer, who of necessity must make many, often instantaneous choices in the course of a day.*”<sup>3</sup>”

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<sup>2</sup> Rachlinski, J. J. (2003). The uncertain psychological case for paternalism. *New York University Law Review*, 97, 1165–1225.

<sup>3</sup> The average consumer, the unfair commercial practices directive, and the cognitive revolution published online: 27 February 2007 Springer Science + Business Media B.V. 2007, by *Rossella Incardona* & *Cristina Poncibo*

29. In U.S, the FTC Act simply protects the public as a whole, some of whom may not be very attentive to advertising claims, and may not dissect such claims with alacrity.<sup>4</sup> In Ford Motor Co. v. Federal Trade Commission, 120 F.2d 175, 182 (C.C.A. 6th Cir. 1941), involving a credit plan that was clearly spelled out in the text of the advertisement, the court upheld a finding of deception because the "average individual does not make, and often is incapable of making, minute calculations to determine the cost of property purchased on the deferred payment plan."

30. However, FTC still recognizes that the general public may be "reasonable" and yet not live up to the model of the skeptical purchaser. Furthermore, the advertiser must take into account the particular vulnerabilities of the audience to whom the message is addressed. It would be totally unwarranted to permit an advertiser to focus a marketing campaign on a less than sophisticated audience, and then judge their claims from the perspective of the reasonable person.

31. FTC's 1983 Policy Statement, which states that the deceptiveness of an act or practice will be examined from the "*perspective of a consumer acting reasonably in the circumstances*," does not necessarily derogate from the earlier standard. Case law has already firmly established that a consumer acting reasonably under the circumstances may nonetheless be unsophisticated and even careless.

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<sup>4</sup> Pitofsky, Beyond Nader: Consumer Protection and the Regulation of Advertising, 90 Harv. L. Rev. 661, 675 (1977) ("The standard for 'deception' has been the 'average' or 'ordinary' person in the audience addressed by the ad, taking into account that many who may be misled are unsophisticated and unwary"). See also Doherty, Clifford, Steers & Shenfield, Inc. v. F. T. C., 392 F.2d 921, 926 (6th Cir. 1968)

32. Taking the above into account, I am of the considered view, that if in Pakistan, we want to encourage a compliance oriented approach *viz a viz* Section 10 of the Ordinance we must place a higher onus on the Undertakings in relation to the marketing practices. Therefore, from OFT's perspective, the consumer to whom such information is disseminated has to be the 'ordinary consumer' who is the usual, common or foreseeable user or buyer of the product. Such a consumer need not necessarily be restricted to the end user. Here it may be relevant to point out that the 'ordinary consumer' is not the same as the 'ordinary prudent man' concept evolved under contract law. Unlike the 'ordinary prudent man' the thrust on ordinary diligence, caution/duty of care and ability to mitigate (possible inquiries) on the part of the consumer would not be considered relevant factors. It must be borne in mind that one of the objectives of the Ordinance 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. In my considered view, restricting its interpretation with the use of the words 'average', 'reasonable' or 'prudent' will not only narrow down and put constraints in the effective implementation of the provision it would, rather be contrary to the intent of law. It would result in shifting the onus from the Undertaking to the consumer and is likely to result in providing an easy exit for Undertakings from the application of Section 10 of the Ordinance. Accordingly, the term 'consumer' under Section 10 of the Ordinance is to be construed as an 'ordinary consumer' but need not necessarily be restricted to the end consumer of the goods or services.

33. Having examined concepts of the terms ‘false’, ‘misleading’ and ‘consumer’ in the context of ‘deceptive marketing practices’, I will now proceed to analyze whether or not the subject advertisement was deceptive in terms of Section 10 of the Ordinance?

34. Firstly, I will look at the duration of call at which the advertised rates are applicable in ‘8 any per call’ offer by CMPak;

35. It was observed in the case of Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471 by the Federal Trade Commission of USA (FTC) 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 (3<sup>rd</sup> 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)*. In line with the aforementioned judgments, the advertisement of the offer is also to be reviewed as a whole which gives an impression that CMPak is advertising that, now consumers can make calls to any other mobile network for 8 Aanay i.e. 50 paisas per call and can change that number any time they want however, 40 paisas extra will be charged for the first minute only. The duration of the call is not specified when the phrase **'Now make calls to any other mobile network for 8 Aanay i.e. 50 paisas per call'** is read or heard in juxtaposition with **'you will have to pay 40 paisas extra for the first minute only'**. This in fact is likely to give an impression to the 'ordinary consumer' that the duration of call is not relevant and it is applicable to a per call arrangement. Even if it is to be presumed otherwise, that there has to be a call duration, unless specified otherwise, the general impression would be that it is a per-minute rather than 30 seconds duration.

36. CMPak in its reply and at the hearing, submitted that, the information about the duration of the call is provided in the last slide of the advertisement, which I must point out is flashed on the screen only for 2 seconds and the text disclosing that, *'billing is 30 seconds'* is very small and not legible in this regard. It is a settled principle that *'fine print disclaimer, are inadequate to correct the deceptive impressions'*. In fact, such disclaimers are, in themselves, a deceptive measure. I



have no doubts in observing that the subject advertisement is misleading as it gives an ordinary consumer not only the wrong impression about the call duration but also of the charges levied for making such a call.

37. Even otherwise, the rates which are publicised by CMPak i.e., 50 paisa per call are exclusive of government taxes. Although the representation of ‘8 *Anay per call*’ offer does mention the interconnect charges, when the applicable taxes i.e., 21% FED is included in the advertised call rates of 50 paisa per call, the actual call rate becomes approx. 61 paisa per call, however, the same finds no mention anywhere in the said advertisement. (Therefore, the omission on the part of CMPak, by not informing the consumers that, the rates are exclusive of tax, and the omission to mention the government taxes, is potentially misleading to consumers). It may be further appreciated 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.

In the case of *International Harvester Co., 104 F.T.C. 949 at pg. 1058*, it was held that,

*“[i]t can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression...”*

...

*“It can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitutes an implied but false representation.”*

38. It is noteworthy that, on behalf of CMPak it was forcefully argued during the hearing that, nothing has been omitted, the consumers can call at 310 i.e., the toll free customer service number and obtain all the requisite information before availing the offer. The Counsel has also relied upon a legal maxim '*CERTUM EST QUOD CERTUM REDDI POTEST*', which means; '*this is sufficiently certain which can be made certain.*' While I do not find any relevance of this maxim in the application of Section 10 of the Ordinance, I would like to refer to another maxim "*A NON POSSE AD NON ESSE SEQUITUR ARGUMENTUM NECESSARIE NEGATIVE LICET NON AFFIRMATIVE*" which means '*from the impossibility of a thing you may infer its non existence but not from possibility of a thing its existence*' and as mentioned, applying the cited maxim as presented by the Counsel, would conveniently shift the onus from the Undertaking to the Consumers- if all distribution of information is made subject to the requirement that consumer could have ascertained its veracity or the details thereof, it would render the need of section 10 of the Ordinance redundant.

39. It has been noticed that, in the advertisements, be it oral representation or the written text displayed, the consumers were not being informed to call at 310 and get the requisite information. The advertisement however mentions that, “[T]o

*avail this offer please dial 907 from your ZONG number and say it all!.*” It has also been noticed that upon calling at 907, a recorded voice guides the consumer through the process for the addition of that special number at which the advertised rates are applicable. Moreover, upon activation Rs. 15 + tax are instantly deducted without intimation. Omission of such disclosures clearly contribute to deceptive marketing. It has also been argued by the counsel of CMPak that, the entire information regarding the ‘8 Anay per call’ offer is also available at Zong’s website [www.zong.com.pk](http://www.zong.com.pk). I find no merit this argument as well; it is pertinent to mention here that, reportedly, Pakistan has *approx.* less than 4% percent of internet users, leaving a vast majority of public without any knowledge of the World Wide Web. Also, it is important to mention here that the aforesaid aspects have not been mentioned either in the oral presentation or in the text displayed at the end of the advertisement. I am of the considered view that the omission regarding applicability of taxes and in particular automatic deduction of Rs. 15/- + tax thereon is a material one, and deceptive, in terms of Section 10 of the Ordinance. Reference is made to *Cliffdale Associates, Inc., 103 F.T.C. 110, (1984)* wherein it was held:

*“Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser.”*

40. The omissions in disclosure and the implied impression conveyed through representations are of the nature that is likely to be deceptive even for a sophisticated consumer, leave alone the 'ordinary consumer'.

41. In view of the above discussion what has been discussed in the preceding paragraphs, I hereby hold that, the advertisement of '8 Any per call' offer was false and misleading, hence, deceptive and in violation of sub-section (1) of Section 10 of the Ordinance in terms of clause (b) of sub-section (2) of Section 10 of the Ordinance. It lacks the reasonable basis regarding the price i.e., call rates, exclusive or inclusiveness of government taxes being not specified and its character i.e., the duration of call at which the rates were applicable was not stipulated clearly. While these factors are misleading in some way or the other, I find the statement made in the advertisement that 'call at 907 and say it all' as an information that is 'false' in nature; dialing 907 activated for Zong's customer/consumer the '8 Any per call' offer and subjected the customer to an automatic deduction of Rs.15 + tax thereon from the prepaid account – withholding/omission of such information is material and is contrary to facts advertised. I have no doubts in holding the subject advertisement as violative of Section 10 of the Ordinance.

42. It is pertinent to mention here that CMPak has stopped its advertisement after issuance of the Show Cause Notice and submitted its undertaking on February 12, 2009; showing its willingness to comply with the provisions of Section 10 of the Ordinance, therefore, I am not inclined to impose any penalty on it.

43. While the Show Cause Notice issued to CMPak is disposed of in-terms of this Order without imposition of any penalty. CMPak is however, reprimanded that in the future OFT of CCP will take a very strict view of any or all non-compliances or contraventions of the Ordinance. This lenient approach has been taken only in view of the peculiar circumstances of the instant cases and the fact that initially CCP is inclined to have a compliance oriented approach *vis a vis* OFT matters.

#### **HEARING IN THE MATTER OF ‘Ufone’**

44. Having dealt with the matter of CMPak, I may now proceed with the issue and Show Cause Notice issued to Ufone.

45. For the disposal of the Show Cause Notice issued to Ufone, the matter was fixed for hearing on February 04, 2009 at 3:00 p.m. at Islamabad. Accordingly Mr. Ijaz-ul-Hassan and Syed Reza Ali, advocates of Cornelius Lane & Mufti representing Ufone, along with Mr. Akbar Khan-GM Marketing, Syed M. Irfan-Senior Manager Legal Affairs, Asher Khan-Chief Marketing Officer, Asif Saeed Malik-Head of Marketing and Hajra Faruk-Head of Strategy and Marketing of Ufone appeared before CCP and argued the matter in detail.

46. At the outset, I must record my appreciation for the team representing the matter on behalf of Ufone, lead by the senior counsel Mr. Ijaz-ul-Hassan who explained and argued the matter ably and provided thorough assistance to CCP in the matter.

The presence of the senior officials at the hearing also reflects the concern and seriousness to resolve the concerns raised by CCP through the Show Cause Notice.

47. On behalf of Ufone it was submitted that (i) Ufone's *Uwon* package was the cheapest as per a comparison done on August 17, 2008 for prepaid minute packages. The *Uwon* package is without reference to other packages offered which include post paid, friends and family packages, time of the day, committed charges, limited time expiry etc., and it is specifically submitted that the *Uwon* package was the cheapest as compared to similar pre-paid, per-minute packages offered by other service providers; (ii) there is an appropriately worded disclaimer regarding the specific nature of the *Uwon* package in all advertisements aired or published which reads as: "*Uwon is the lowest cost package as per comparison done on August 17, 2008 for the prepaid minute packages without anytime of day, friends and family pre-committed charges, limited time expiry, daily/monthly charge restriction*"; (iii) CCP has erroneously compared the *Uwon* package with the Telenor 30 Second package and the Zong 8 Anay package. The comparison does not stand because *Telenor Talk Shawk* and *Zong 8 Anay* packages are formulated on a 30 second basis while *Uwon* is on a per minute basis. The *Telenor Talk Shawk A-1* package is suitable for comparison with the *Uwon* package but the *Telenor Talk Shawk A-1* package and the *Zong 8 Anay* package are more expensive as they have a 'call set up' charge hidden in them. Furthermore, the *8 Anay* package is only for one mobile number while *Uwon* is not, so there can not be a feasible comparison; and (iv) the advertisements are not binding contractual obligations but merely an invitation to treat. Moreover, there are no rules, directives or regulations prescribed by the PTA or by the Pakistan

Electronic Media Regulatory Authority (PEMRA) which defines the specific nature of advertising contents and Ufone's advertisement conform to prudent business standards and practices. Furthermore, the advertisement was aired in consonance with the constitutional rights and safeguards enjoyed by Ufone pursuant to Article 18 and Article 19 of the Constitution of Islamic Republic of Pakistan, 1973.

48. Having heard the arguments of Ufone, I am of the considered view that, as in the matter of CMPak, the issue that requires determination is whether; the advertisement is of such nature that, amounts to deceptive marketing. As for the terms 'false', 'misleading' and consumer' the principle laid down in this Order *ibid* would apply and need no further deliberation. However, with respect to the subject advertisement, the factors that need consideration for such determination importantly, are:

- Call duration at which the advertised rates are applicable
- appropriateness of the disclaimer
- Omission of any information making the advertisement misleading for e.g. call duration, applicability of taxes etc.

49. Firstly, I would look at the general net impression of the advertisement.

50. Previously discussed in Para (39) above of this Order and in line with the judgments in the cases of Standard Oil of Calif., Beneficial Corp v. FTC, and

*American Home Products Corporation, v. Federal Trade Commission (Supra)*, the advertisement of the offer is to be reviewed as a whole (both televised and the newspaper advertisements) to get the net general impression, which in the instant case is that; Ufone consumers can call at the cheapest rates in the world compared to other mobile networks.

51. Ufone has submitted that the rates offered by the *Uwon package* are the cheapest per minute rates in the world to call as per the comparison of August 17, 2008, therefore, it would be unjust to compare the per minute package of *Uwon* with the *Telenor Talk Shawk 30 second package* and *Zong's '8 Anay'* as the latter packages charge call rates on 30 seconds. This was satisfactorily substantiated by the Counsel by providing the rate lists from various other countries.

52. While I appreciate that the advertisement pertains to a per minute package and assuming as explained, is the cheapest on the basis of per minute package, it is pertinent to point out that the televised advertisement, unlike the newspaper advertisements, does not mention that the advertised rates, to call other networks, are applicable on per minute calls.

53. In this regard, Ufone has submitted that the advertisements contain an appropriately worded disclaimer, which states, “[t]his package offered by the Ufone is the cheapest as per comparison done on August 17, 2008 for prepaid minute package without any time of day, friends and family, pre-committed charges, limited time expiry and daily monthly charge”, I wish to point out here



that such disclaimer was neither visible nor readable, moreover, the disclaimer was in English and rest of the presentation of the advertisement was in bold and fairly visible Urdu text'. It is pertinent to mention here that, the consumers are interested in listening to understandable language and also read text which is legible and comprehensible. In this regard, it is a settled principle that '*fine print disclaimer, are inadequate to correct the deceptive impressions*' in fact such disclaimers are, in themselves, a deceptive measure. Even if an express or implied representation in an advertisement is accompanied by disclaimers or qualifiers; such caveats will nullify a misleading effect only, if they appear, in such a way as to eliminate the advertisement's tendency to mislead in its overall effect.

54. Ufone was advertising the following call rates for *Uwon* through their advertisements:

<b>Call details</b>	<b>Call rates</b>
Ufone to Ufone (On-net)	Rs. 1/min
Ufone to other Networks and PTCL	Rs. 1.6/min

It is pertinent to mention here that, the aforesaid call rates advertised by the undertaking are exclusive of government taxes, as 21% FED is applicable on all the calls made, which makes the calls made from Ufone to Ufone Rs. 1.21/min and Rs. 1.94/min. Although, in the news paper advertisement and brochures made available at sale points, we note that in a very small font it is mentioned in Urdu

text that rates are ‘exclusive of taxes’ however, this is not an adequate disclosure. We must recognize that such information must be clearly conveyed to the customer/consumer as the advertised call rates increase, when 21 % FED are included in the advertised call rates. I may also add, that in the televised advertisement no such clarification appears verbal or in print. In terms of what has been stated above, I find the advertisement as misleading hence deceptive under Section 10 of the Ordinance.

55. As stated earlier, in the telecom sector, the scope of the term ‘consumer’ in its widest amplitude will include an ordinary user/consumer, whereas the omissions in disclosure and the implied impression conveyed through representations are of the nature that are likely to be deceptive even for a sophisticated consumer. I have no doubts in holding the subject advertisement as violative of Section 10 of the Ordinance. What further needs to be appreciated is the fact 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/potential to deceive and the capacity to mislead. Please refer to *American Home Products Corporation, A Delaware Corporation, Petitioner, v. Federal Trade Commission, Respondent, 695 F.2d 681 (1982-83 Trade Cases 65,081)* wherein it was held that,

*“...[a]ctual deception need not be shown by complaint counsel to carry its burden of proof. It is necessary only that the advertisements have the tendency or capacity to deceive...”*

The aforementioned principle was also followed which was subsequently upheld in *Federal Trade Commission v. Direct Marketing Concepts, Inc.*, 569 F.Supp.2d 285 (2008).

Therefore, I hold the omission on part of Ufone to disclose in the televised advertisement the duration of call at which the rates are applicable despite the fact that there is a disclaimer (which was not legible and in the language (i.e. English) other than that used for advertising the product) - as distribution of misleading information to consumers.

56. During the hearing it was argued by Ufone that, the advertisement is an invitation to treat and the advertisement was aired on television in exercise of their fundamental rights under Article 18 and 19 of the Constitution of Islamic Republic of Pakistan. This argument of Ufone is not tenable as reference to Article 18 and 19 of the Constitution does not appear to be in context. It needs to be appreciated that the freedom of trade business or profession under Article 18 of the Constitution is subject to such qualifications, if any, as may be prescribed by law and the freedom of speech under Article 19 is also **subject to reasonable restrictions imposed by law in the interest of decency or morality or incitement to an offence.** Under the Ordinance it is the responsibility and obligation of CCP to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behaviour, including deceptive marketing practices.

57. Since, Ufone has stopped its advertisement, after issuance of the Show Cause Notice and incorporated the disclosure in Urdu and in a legible font in their advertisement following consultation with the OFT, I am not inclined to impose any penalty on it. However, Ufone is also reprimanded that in future CCP will take a very strict view of any or all non-compliances or contraventions of the Ordinance. This lenient approach has been taken in view of the peculiar circumstances of the instant cases and the fact that initially CCP is inclined to have a compliance oriented approach *viz a viz* OFT matters.

58. In terms of what has been stated above both the Show Cause Notice No. 27/2008-09 issued to CMPak and Show Cause Notice No. 28/2008-09 issued to Ufone are hereby disposed.

Order passed and signed by me on September 29, 2009 at Islamabad.

Rahat Kaunain Hassan  
Member (Legal & OFT)