

Competition - Pakistan

Competition Commission fines five universities for deceptive marketing practices

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Introduction

The Competition Commission has imposed a total penalty of PRs25 million (approximately \$250,000) on five universities for advertising unaccredited engineering programmes in violation of Section 10 of the Competition Act 2010, which prohibits deceptive marketing practices. The commission had issued show cause notices to 27 institutions and universities that were offering engineering programmes and falsely claiming to be either accredited or approved and recognised by the Pakistan Engineering Council (PEC).

Before issuing the show cause notices, the commission had initiated an inquiry into the matter. The inquiry was primarily based on a review of the institutions' print and online media advertisements from June 2011 to October 2011. The inquiry committee had several meetings with PEC representatives and issued a report which concluded that under the PEC Act 1976, only institutions (in Pakistan and abroad) that are listed in the first or second schedule of the act should be regarded as accredited engineering institutes. The inquiry found that although the institutions in the advertisements claimed to be accredited, approved, permitted and/or recognised by PEC, none were listed in the first or second schedule of the act as offering accredited programmes for an intake of students in 2011.

Issues

In view of the submission made and contentions raised by the institutions, the commission addressed several specific issues relating to the case.

Do the institutions conduct an economic activity and thus fall under the term 'undertaking'?

The commission held that all of the institutions in question offer services in a market; that is, they offer engineering courses and degrees in distinct fields and are therefore covered by the act's definition of 'services'.

Can students be considered as consumers?

Considering the definition of 'services' under the Competition Act, which has a wide scope, the commission held that educational services rendered by institutions fell within the purview of the act; students who are recipients of educational services or beneficiaries thereof thus fall within the act's definition of 'consumers'.

What does 'accredited by PEC' mean in the advertisements in question?

The commission held that the term 'accredited by PEC' implies that an engineering programme has effectively met the standards and procedures prescribed by PEC and only those students that obtain an accredited engineering programme degree can register with PEC as qualified engineers.

Can the advertisements be deemed deceptive marketing?

The commission held that statements or representations contrary to the truth or facts, even if made in negligence on behalf of an undertaking, will be regarded as false. As many of the undertakings had submitted, none of them had been accredited by PEC for the 2011 intake of students. However, those undertakings had claimed to be accredited by PEC in their 2011 advertisements. This meant that the representations made by the undertakings were false, even if they had no intention to deceive.

Commission order

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The commission established that the 27 universities that had been issued show cause notices could not be treated in the same manner and divided them into the following categories:

- those that claimed to be approved, recognised or permitted by PEC to introduce new programmes;
- those that both claimed to be accredited by PEC and ensured that no students graduated without an accredited engineering programme degree; and
- those that claimed to be accredited by PEC, but whose graduates obtained un-accredited engineering programme degrees.

The commission took a lenient view in respect of the universities falling in the first two categories, but nonetheless reprimanded all 27 universities. Furthermore, the commission directed all universities offering engineering programmes to make due disclosures in future. The commission was of the view that the minimum mandatory disclosures must include:

- information relating to the last batch of engineering programme graduates that were accredited by PEC; and
- the status of the institution's application for re-accreditation or initial approval by PEC.

In respect of the third category of offending institution – whose graduates entered the market unable to register with PEC – the commission held that this was too serious a violation to go without penalty. The fines issued to the five universities falling in the third category ranged from PRs400,000 to PRs800,000 (approximately \$4,000 to \$8,000). The commission opined that students who obtained degrees from un-accredited engineering programmes would not only suffer financial loss, but also loss of employment opportunities, both in Pakistan and abroad. With a view to deter the advertisement of false information, the commission imposed a penalty of PRs5 million on each of these five universities. The commission also directed the universities to file written commitments of compliance with the order with the registrar of the commission within 30 days of the order's issuance. If the violations continue, the universities will be liable to a penalty of PRs100,000 (approximately \$1,000) for each day of non-compliance.

The commission also observed that PEC – as the only accrediting body in Pakistan for engineering institutions – must remain conscious of the fact that its monopoly in the market of granting accreditation should be transparent and open. PEC was directed to issue clear and concise guidelines for the accreditation procedure and a code of conduct in order to facilitate efficient compliance with the accreditation process among engineering institutions. The accreditation procedure guidelines should be widely disseminated and 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 PEC practice.

The commission held that PEC (as the regulatory body) could consider further disclosure requirements for all engineering institutions in addition to the minimum standards set out by the commission.

The commission also observed that for financial loss or missed career opportunities, the students or their parents could claim compensation before the courts of competent jurisdiction. Regarding compliance with the Competition Act, the commission specified a minimum standard for mandatory disclosure for all print and online advertisements. The commission further directed that such disclosure be conspicuously displayed and include express and unambiguous information regarding:

- the intake of students up to the year for which PEC accreditation has been granted, in respect of each of the programmes offered; and
- the status of the institution's application for re-accreditation (or the status of initial PEC approval for new programmes).

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