



(Case No. 10 of 2013)

31 May, 2013

In Re:

Shri Shantaram Walvalkar

Informant

And

M/s The New India Assurance Co. Ltd.

Opposite Party No. 1

M/s National Insurance Co. Ltd.

Opposite Party No. 2

M/s United India Insurance Co. Ltd.

Opposite Party No. 3

M/s Oriental Insurance Co. Ltd.

Opposite Party No. 4

Insurance Regulatory and Development Authority, IRDA

Opposite Party No. 5

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. H C Gupta
Member

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (Retd.) S. N. Dhingra
Member

Mr. S.L. Bunker
Member



ORDER UNDER SECTION 26 (2) OF COMPETITION ACT 2002

The informant is a mediclaim policy holder of M/s The New India Assurance Company Ltd and OPs are insurance companies and insurance sector regulator respectively.

2. The informant submitted that health policy Mediclaim 1996 was offered by GIC and after demerger of GIC, Informant's policy was taken over by OP1. In September, 2007 Mediclaim 1996 policy was withdrawn and all the existing policy holders were compulsorily migrated to new scheme viz. Mediclaim 2007. The option to stay back with the old product was given to only those policy holders who had completed 60 years of age as on 01.09.2007. Although there was no distinction among policy holders on the basis of age in Mediclaim 1996.

3. The Informant was aggrieved by certain conditions introduced in Mediclaim 2007 viz. sub-limits and averaging of claims, co-payment and loading on premium; and cumulative bonus etc stating the conditions were advert to policy holders. Alleging contravention of the provision of the Competition Act, 2002 (the Act), the informant sought the following relief:

- (i) directions to IRDA and all public sector general insurance companies to offer options to stay with old product *i.e.* Mediclaim 1996 with all underwriting conditions of Mediclaim 1996 to all policy holders of Mediclaim 1996.
- (ii) direction to The New India Insurance Company not to exhibit co-payment/ loading conditions, averaging of claims mechanism *etc.*

4. The informant alleged that OP1 abused its dominant position by putting anti-competitive and discriminatory conditions in its policy Mediclaim 2007 in contravention of the provisions of section 3 (3) and section 3(4) of the Act. There were no allegations regarding



any concerted action or vertical restraints by the opposite parties either in the information or written submissions, nor the facts and circumstances suggest a concerted action on the part of OP's. Thus prima facia, there seems to be no contravention of the provisions of section 3 of the Act.

5. In order to examine the allegations of the informant relating to abuse of dominant position, the relevant market is to be defined. The informant has not stated anything about relevant market in the information. The Commission considers that 'provision for services non-life (general / health) insurance' would be relevant product market and pan "India" would be geographic market. As such "*provision of services of non-life (General/health) insurance in India*" would be the relevant market in this case.

6. In order to attract the provisions of section 4 of the Act, first the dominance of the enterprise has to be assessed under explanation (a) to section 4 of the Act with due regard to the factors mentioned under section 19(4). The insurance sector in India can be broadly divided into life insurance, general (non-life) insurance and re-insurance business. There are presently fifty insurance companies which have been granted registration for carrying insurance business in India, comprising twenty four life insurance companies, twenty five non-life insurance companies and one re-insurance company. Further, insurance sector is primarily regulated by IRDA, which controls the entry and investment into insurance sector in India including granting certificate of registration for carrying on insurance business in India, launch of new products, premium structure, investment of funds *etc.*

7. As such the insurance sector in India is highly fragmented with the presence of forty-two private players in life and general insurance along with PSU insurance companies. Private companies have 30 per cent of the market share in life insurance and around 41 per cent of the market share in general insurance sector. As per the Annual Report 2011-12 of IRDA, in the general insurance business (to which the present case is concerned), in terms of gross direct premium income for the year 2010-2011, the top five companies account for approximately 69 per cent market share. The OP 1 has only 16.16% market share in of non-life (general / health) market in 2011-12.



8. In view of the highly fragmented nature of the non-life (general / health) insurance market in India due to the presence of various players, no company including OP 1 can be said to be in a dominant position in the relevant market of the provisions for services of non-life (general / health) insurance in India. As such the dominance of none of the players in the relevant market was *prima facie* established and therefore the question of abuse of dominant position does not arise.

9. Even otherwise, the option based on age to some of the erstwhile policy holders of Mediclaim 1996 cannot be considered as an unjust or unfair discriminatory condition as age is an essential factor in any health policy product and may be a ground for reasonable classification.

10. In view of the above discussions, the Commission is of the opinion that *prima facie*, there seems to be no contravention of the provision of section 4 of the Act.

11. As regards the prayers made against IRDA, it is found that the same are misconceived as IRDA is a statutory sector regulator and cannot be treated as an enterprise within the meaning of section 2(h) of the Act keeping in view the nature of its activities.

12. In the light of the aforesaid discussion, the Commission finds that no *prima facie* case was made out against the opposite parties under sections 3 or 4 of the Act for referring the matter to DG for investigation. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.



13. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

New Delhi

Dated: 31-5-13

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(H C Gupta)
Member

Sd/-
(Dr. Geeta Gouri)
Member

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