



**COMPETITION COMMISSION OF INDIA**  
**Case No. 12 of 2019**

**In Re:**

**Indian Chemical Council**  
**C/o R.R. Gokhale, Secretary General**  
**Sir Vithaldas Chambers, 6<sup>th</sup> Floor**  
**16 Mumbai Samachar marg,**  
**Mumbai-400001**

**And**

**General Insurance Corporation of India**  
**“Suraksha”, 170, Jamshedji Tata Road,**  
**Churchgate,**  
**Mumbai-400020**

**CORAM:**

**Mr. Ashok Kumar Gupta**  
**Chairperson**

**Mr. U. C. Nahta**  
**Member**

**Dr. Sangeeta Verma**  
**Member**

**Order under Section 26 (2) of the Competition Act, 2002**

1. The present information has been filed by Indian Chemical Council (“**Informant**”), under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against General Insurance Corporation of India (“**GIC**”) alleging contravention of the provisions of Section 4 of the Act.
2. As per the Information, the Informant is an apex national level organization representing all types of chemical industries in India. It was established in 1948, and is representing the interests of all its members.
3. GIC, formed in pursuance of Section 9(1) of the General Insurance Business (Nationalization) Act, 1972, was re-notified as the Indian Reinsurer in November, 2000.



GIC receives statutory cession of 5% on every general insurance policy in India subject to certain limits, which means that all insurance companies operating in India have to mandatorily cede or transfer 5% of their liabilities under the insurance policies issued by them to GIC.

4. Insurance Regulatory and Development Authority of India (“**IRDAI**”) is the regulatory authority for the Indian insurance sector, including the reinsurance sector, and the relevant regulations are the IRDAI (Reinsurance) Regulations, 2018 (“**Regulations**”) which came into force on 01.01.2019. The Informant has stated that in terms of the Regulations, GIC continues to enjoy first preference in reinsurance placements of Indian cedents over other reinsurers. The Informant has further stated that GIC is dominant in the overall reinsurance market in India as it held a market share of 87% in terms of the gross written premiums and 90% in terms of net written premium ceded by Indian insurers to reinsurers, during 2017-18.
5. The main grievance of the Informant revolves around a circular dated 12.02.2019 (“**Circular**”), issued by the GIC to all its ceding insurance companies with whom it has entered into reinsurance treaties, notifying certain amendments to the method of calculating premium that the ceding insurance companies need to comply with, within the fire insurance segment. The new parameters for calculating premium have become effective from 01.03.2019 and it has been averred that on account of such change by GIC the insurance companies, in fire insurance segment, would charge premiums multiple times the existing premium.
6. With reference to the said Circular, the Informant has cited the following instances of abuse of dominant position by GIC thereby violating the provisions of Section 4 (2)(a) of the Act:
  - i. GIC has provided no reasonable justification for amending its premium calculation parameters under the treaties. It has also not consulted the general insurance industry bodies, or trade associations, and did not consider the trickle down effect of the changes.
  - ii. The revised parameters have no causal link to the GIC’s underlying costs for providing reinsurance services.



- iii. The amendments introduced by the Circular are not equally applied to similarly placed occupancies. GIC relied on the “loss cost” schedule prescribed by Insurance Information Bureau, which prescribes rates for 109 occupancies. However, the GIC chose to apply the amended reinsurance premium parameters only in respect of 8 occupancies (*i.e.* textile, plastics, rubber goods manufacturing, chemical manufacturing below 32°C flashpoint, storage of category III goods, transporters’ godown, steel plant and power plants), without giving any reasonable justifications. Further, GIC has not distinguished between the low risk and the high risk units. There is no provision in the circular for lower premium rates for better protected risks. This is not only against better risk management practices but also against commercial logic.
  - iv. GIC has neither made any provision nor made any offer of discount for voluntary higher deductibles. It has been a general practice in the insurance market that insurance tariffs always used to have better premium rates whenever the insured/ policy holder wanted to participate in the risk by taking higher deductibles.
  - v. GIC has gone against the ‘*Guidelines for pricing a risk*’ issued by IRDAI, *vide* circular dated 12.11.2014. These guidelines, *inter-alia*, provides analysis of risk for calculation of premium.
7. Based on the above averments and allegations, the Informant has, *inter-alia*, prayed that GIC be directed to withdraw the Circular dated 12.02.2019, issued by it to its ceding insurance companies under their respective treaties. The Informant has also filed an application under Section 33 of the Act praying that GIC be restrained from implementing the Circular against the ceding insurance companies under its reinsurance treaties.
8. After perusing the information, the Commission considered the matter in its ordinary meeting held on 16.04.2019 and decided to make a reference to IRDAI (Statutory Regulator) in terms of the provisions of Section 21A of the Act for seeking its opinion on the issues raised/ allegations made in the information dated 27.03.2019. Opinion of the IRDAI was also sought specifically on (a) whether circular dated 12.02.2019, issued by GIC is violative of the circular dated 12.11.2014 of IRDAI on Guidelines for pricing



- a risk in respect of policies issued to commercial entities; and (b) whether said circular dated 12.02.2019 is in consonance with the provisions of the Insurance Act, 1938, IRDAI (Reinsurance) Regulations, 2018 and other relevant regulations, if any, issued by IRDAI.
9. The Commission received a response to the aforesaid reference from IRDAI *vide* letter dated 12.06.2019 in which it opined that GIC circular dated 12.02.2019 is not violative of the circular of IRDAI dated 12.11.2014 and the same is in consonance with the provisions of the Insurance Act, 1938 and the relevant regulations issued by IRDAI including IRDAI (Reinsurance) Regulations, 2018. IRDAI further opined that it does not intervene in pricing decision of a reinsurer, thereby allowing the prices to be driven by market forces to ensure competition. IRDAI also highlighted the fact that certain Writ Petitions have been filed before Hon'ble High Court of Delhi and Hon'ble High Court of Telangana, *inter-alia* challenging GIC's circular dated 12.02.2019. The Hon'ble Delhi High Court dismissed the petitions, *vide* common order (W.P. 3670 of 2019 and other connected matters) dated 12.04.2019. The Hon'ble High Court of Delhi observed that it was within the commercial wisdom of GIC to decide the quantum of premium that ought to be charged by GIC and it is fully entitled to determine the rates at which it offers re-insurance in respect of risks covered by various insurance companies.
10. The Commission observes that the allegations of the Informant against GIC germinate from the circular dated 12.02.2019, which allegedly increases the premium charged by insurance companies manifold. The Commission notes that the said circular, *inter-alia* states as under:
- “Notwithstanding the above, nothing in this clause prevents the Reinsured to offer lower rates than the above to the primary insured, however in all such cases, the risk cannot be ceded to this treaty”*
11. IRDAI being the sectoral regulator, upon reference by the Commission, has given its opinion that the circular, dated 12.02.2019, of GIC is not in breach of relevant regulations and guidelines issued by it. The said circular cannot be said to be anti-competitive, merely because it leads to enhancement in premium. It may not be appropriate on the part of the Commission to delve into aspects relating to quantification of premium and deciding whether any enhancement thereof is unjustifiable since a pure pricing decision cannot be



said to give rise to any competition concern unless it is a manifestation of abuse of dominant position. The Commission further notes that the said circular, neither prevents a general insurance company/ insurer to offer premium at lower rates to a primary insured/ policy holder nor does it prevent general insurance company from opting for an alternate reinsurance company, other than GIC. Therefore, general insurance companies have the freedom to decide their premium rates as well as their reinsurer, irrespective of the said circular.

12. Based on the aforesaid, the Commission does not find alleged contravention of the provisions of Section 4 of the Act against GIC.
13. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed under Section 26(2) of the Act. Consequently, no case arises for consideration of interim relief claimed by the Informant under Section 33 of the Act.
14. Secretary is directed to communicate the order to the Informant accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(U.C. Nahta)**  
**Member**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**New Delhi**  
**Date: 26/07/2019**