



Case No. 27 of 2013

In re:

Mr. V. Senthilnathan, Chartered Accountant Informant
9/F2, Barakath Villa, Sixth Avenue, Ashok Nagar, Chennai-600083

And

M/s. United India Insurance Co. Ltd. OP 1
Head Office, 24, Whites Road, Chennai-600002

M/s. E-Meditak (TPA) Services Ltd. OP 2
B-9/6257, Vasant Kunj, New Delhi-110070

CORAM:

Mr. Ashok Chawla
Chairperson

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 the Competition Act, 2002

OP 1 is a public sector general insurance company incorporated in 1938. It obtained the business of Mediclaim Insurance for the CanCard Holders under group insurance from the year 2005-06. Earlier, CanCard



management utilized the services of M/s. New India Assurance Co. Ltd., New Delhi, for the same medi-claim insurance.

2. At the time of filing of the information, the Third Party Administrator for OP 1 was stated to be M/s. E-Meditak (TPA) Services Ltd. (OP 2). Prior to year 2005-06, the TPA for New India Assurance Co. Ltd was M/s. Medi Asst India (P) Ltd., Bangalore.

3. TPAs were introduced by Insurance Regulatory and Development Authority (IRDA) in the year 2001 to ensure better services to policy holders. Their basic role is to function as an intermediary between the insurer and the insured and facilitate cashless service at the time of hospitalization as well as processing of claims. Insurance companies, in order to improve the processing of claims, appoint TPAs, licensed by IRDA. The selection of TPAs from amongst the licensed rests with the Insurance Company and no criteria / procedures are specifically laid down for such selection by IRDA. The selection of TPAs and terms and conditions of the Agreement between the Insurer and TPAs are decided by the respective Insurance Companies only.

4. Accordingly, OP 1 appointed OP 2 as its TPA. As per the information, the agreement entered between OP 1 and OP 2 ('the agreement') didn't contain any clause to fix the responsibility to collect data of the existing policy holders inclusive of Group Insurance policy holders at the time of obtaining Mediclaim Insurance business in 2005-06. The processing of claim applications was being carried out by OP 2 with the current status of the applicants without considering the past insurance policies for continuation, claims paid, inclusion and exclusion of members within the family etc.

5. As per the informant, OP 2 failed to fulfil its obligations stated under various clauses of the agreement with OP 1 which benefited the policy holders. The Informant pointed out certain clauses in the agreement not being complied by OP 2. The clauses pertained to renewal/termination of the policy, denial of preauthorization, claim intimation, repudiation of claim etc.

6. The informant did not appear to present his submissions on the scheduled date of hearing before the Commission despite notice.



7. It was alleged in the information that OP 1 abused its dominant position and there by contravened section 4 of the Act. The dominance of OP 1 and OP 2 as contended by the informant seems misconceived. The Informant alleged that since OP 1 was the only and dominant service provider to CanCard Group Medi insurance policy holders, all CanCard holders who opted for these medi-claim policies were necessarily required to carry out all the transactions through the OP 2 and OP 1 only. Hence, OP 1 was Dominant for the Group Medi Insurance policies for CanCard holders who opted for this group insurance scheme.

8. In *Shri Kaushal K. Rana v. DLF Commercial Complexes Ltd.* (Case No. 50 of 2012), the Commission observed that the relevant market in every case must be determined after giving due regard to the relevant geographic market and relevant product market as required by the provisions under Section 2(r) read with section 19(5) of the Act. Section 2(t) defines relevant product market as '*a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use*'. Further section 2(s) defines relevant geographic market as '*a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas*'.

9. Considering these provisions of the Act, the relevant market presumed by the informant was incorrect. The informant defined dominance of OP 1 not on the basis of any relevant product market or geographic market. Rather, the dominant position of OP 1 was supposed on the basis of the fact that all CanCard Group Medi insurance policy holders were necessarily required to carry out their transactions through OP 1 and OP 2. At the outset, it may be noted that every business runs on a business model best suited to its peculiar requirements. Owing to the deficient and inadequate healthcare services and complexities emerging from the changing disease pattern, health insurance emerged as an important mechanism to finance the healthcare needs of people. However, the complexity of health insurance industry led to the advent of



Third Party Administrators (TPAs) in this sector. The presence of TPA was aimed at ensuring higher efficiency, standardization and improving penetration of health insurance in the country. TPAs play an important role in standardization of charge and managing cash-less services in health insurance. It may be noted that that TPAs are licensed through the IRDA and their conduct is governed by The IRDA (Third Party Administrators-health services) Regulation 2001. As per the said Regulations if the TPAs fail to bring to the notice of the insurance company with whom it has an agreement, any adverse report or inconsistencies or any material fact that is relevant for the insurance company's business, then in that case the action for cancellation or revocation of license of the TPA can be initiated by IRDA. The terms and conditions of the TPA depend upon the mutual agreement between the insurance company and the TPA. The agreement enshrines the scope of contract, the facilities to be provided and the remuneration payable to the TPA by the insurance company. More than one TPA can be engaged by the an insurance company. Similarly, a TPA can serve more than one company. *Prima facie*, the requirement of routing transactions through TPA's doesn't result in TPA becoming dominant vis-a-visa policy holder.

8. Medical Insurance, as the relevant product market, is a different product compared to other insurance products provided by various general insurance companies. Thus, it has no substitute available in the market. It can be sold as a product to an individual buyer or can be sold to a group of person under group health insurance scheme. In case of group health insurance, Since, there is not much difference in the policy patterns between these two categories (apart from certain additional benefits which group insurance policy holders get because of stronger bargaining power) group health insurance and individual health insurance cannot be considered as different product in this case as submitted by the Informant. The relevant geographic market in this case is the whole of India as medical insurance of a company can be sold to any person residing in any part of the country and a policy holder can avail the medi-claim benefits anywhere within India where the services are available. Thus, the relevant market in the instant case, *prima facie*, is "***the market for the services of medical insurance in India***".



9. As per the IRDA report 2011-12, OP 1 holds around 15.09% market share in the medical/health insurance sector. Presence of other health insurers in the market *prima facie* indicates that this market is competitive. From the material available in the public domain, OP 1 does not seem to hold a position of strength in the relevant market which can enable it to operate independently of the competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. On the basis of material placed on record, the Commission did not find OP 1 to be dominant in the relevant market for the services of medical insurance in India. Since *prima facie* OP 1 is not dominant in the relevant market, its conduct cannot be examined under section 4 of the Act. With regard to the allegation of dominance of OP 2, it may be noted that as per the latest information available in the website of IRDA, there are 31 TPAs working in India. None of these TPA was dominant in the relevant market of the services provided by them to various health insurance policy holders and non-life insurance companies within India. Therefore, *prima facie*, the conduct of OP 2 also cannot be examined under section 4 of the Act.

10. Informant further alleged that the agreement between OP 1 and OP 2 contravened section 3 of the Act as OP 1 and OP 2 did not adhere to various clauses of the agreement, which amounted to appreciable adverse effect on competition. It is relevant at this stage to consider the latest guidelines issued by the IRDA which provides for portability of medi-claim policies, allowing the consumers/policy holders to deal with other insurance companies. For section 19(3) of the Act to apply, there should be an agreement which creates barriers to new entrants in the market or forecloses competition by hindering entry into the market or curtails accrual of benefits to the customers, all of which are understood to have appreciable adverse effect of competition. None of these seems to be present in this case. Moreover, if the said act of OP 1 and OP 2 were affecting the policy holders' interest adversely, they had an option to shift to other available options in the competitive market. If OP 2 (TPA) was not fulfilling its obligation under the contract between it and OP 1 (the Insurance Company) then, the Insurance Company could have terminated the contract or take legal remedies available under the different statutes. The



policy holders (informant) can also complain to the IRDA in case the TPA is not following the directions and the guidelines of the IRDA as the conduct of the insurance companies as well as the TPAs are regulated by IRDA.

11. In view of the foregoing, the Commission thinks it appropriate to close this case under section 26(2) as no contravention of the provisions of the Act is *prima facie* found to exist.

12. The Secretary is directed to inform the parties accordingly.

New Delhi

Dated: 01/07/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

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(Anurag Goel)
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