



COMPETITION COMMISSION OF INDIA

Case No. 39 of 2014

In Re:

**Shri Dilip Modwil
MIG/117, Ram Ganga Vihar, Phase-II,
Moradabad, UP – 244001**

Informant

And

**Insurance Regulatory and Development Authority
Parisharam Bhavanam, 3-5,
817/818, Basheer Bagh, Hyderabad – 29**

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

Appearances: The Informant- in-person.



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

1. Information in the present case has been filed by Shri Dilip Modwil ('the Informant') under section 19(1) (a) of the Competition Act, 2002 ('the Act') seeking a direction from the Commission to direct the Insurance Regulatory and Development Authority (IRDA) to repeal the IRDA (Licensing of Bancassurance Agents) Regulations, 2002 which allows grant of corporate agency license to banks to sell insurance products. This is alleged to lead to concentration of power in hands of bank conglomerates at the expense of lost jobs and business of insurance brokers and independent insurance agents.
2. As per the information, based on the IRDA (Licensing of Bancassurance Agents) Regulations, 2002 and such other schemes for greater insurance penetration into the public, banks have been granted corporate agency license to operate in insurance retailing. It was believed that such retailing would raise competition which in turn benefits the consumers in terms of increased access to insurance products, increase in the quality of services, *etc.*
3. It is averred that insurance retailing by banks over the years proved to be anti-competitive. It has led to increased concentration of power in hands of bank conglomerates in regards to retailing of insurance products. Banks have exploited their access to privileged customer information in selling insurance products to them. This advantage has deprived their competitors of level playing field and it has enabled banks to operate independently of the competitive forces.
4. In addition, it is averred that customers have been deprived of professional expert advice. As per the Informant, insurance retailing requires specialized knowledge and professionals who specialize in the field. Such professionals are relatively better equipped in terms of specialised knowledge for selling insurance products than the employees of banks, who have only superficial



knowledge about various insurance products and insurance retailing market. Banks, because of their strategic position are interested only in earning commission through selling insurance products without providing professional expert advice to the customers. Moreover, selling insurance products also requires after sale services which the employees of banks are unable to provide. In case of claims, consumers find it difficult to seek advice and service from banks. This is stated to be an unethical commercial conduct stemming out from the multiple roles that banks have undertaken. The Informant has further averred that when an individual or organization is involved in multiple interests, one of which could possibly corrupt the motivation or may create a situation of 'conflict of interest', a situation in which an individual or corporation is in a position to exploit a professional capacity in some way for their personal or corporate benefit.

5. In the above backdrop, the Informant has alleged that there exists silent but coercive tie-in arrangement between banks and the clients financed by the banks in insurance retailing by banks which is in contravention of the provisions of section 3(4) (a) of the Act. Contravention of section 3(4) (b) of the Act *i.e.*, exclusive supply agreement is alleged on the ground that the clients financed by the banks are restricted to buy insurance products from other insurance brokers and independent insurance agents than that of its principal *i.e.*, the financing bank. The Informant also alleged contravention of section 3(4) (c) of the Act as there exist exclusive distribution agreement between various insurance companies and their agent banks which limits and restricts the independent agents and insurance brokers to sell insurance products to customers who avail finance from banks. It is averred that banks have adopted a 'refusal to deal' approach towards their clients in case they prefer to buy insurance products from other insurance agents which is in contravention of the provisions of section 3(4) (d) of the Act.
6. The Informant has further alleged that banks; because of their size, resources, economic power and market share; are dominant market players and are



abusing their dominant position in contravention of the provisions of section 4(2) (a) (i) & (ii), (b) (i) & (ii), (c) and (e) of the Act. As per the Informant, by imposing unfair and discriminatory condition on the financed clients to purchase insurance product from them, indulging predatory pricing, restricting the insurance retailing market for other independent insurance agents, denying market access to independent insurance agents and using their dominant position in banking market to protect the insurance retailing market banks have abused their dominant position. Access to privileged customer information has provided competitive advantage to banks over their insurance agent competitors. They have exploited their advantageous position to coerce the client and engage in predatory pricing in their effort to drive out their insurance competitors from the market. As per the Informant, reduced competition amongst suppliers of insurance products and services has negatively affected consumers by decreasing their access to insurance products and services, reducing their choice and lowering the quality of services they receive.

7. Based on the above averments and allegations, the Informant has prayed to the Commission to look into the case and eliminate imperfect competition in insurance retailing by ordering IRDA and other constitutional authorities to repeal IRDA (Licensing of Bancassurance Agents) Regulations, 2002 and & pass such other orders as the Commission deems fit and relevant to the case.
8. The Commission has perused the material available on record including the additional written submissions filed by the Informant besides hearing the Informant who appeared in-person on 02.07.2014.
9. From the fact of the matter it is apparent that the Informant appears to be aggrieved by IRDA (Licensing of Bancassurance Agents) Regulations, 2002 which allows grant of corporate agency license to banks to sell insurance products. It is alleged that grant of such license lead to concentration of power in hands of bank conglomerates in insurance product retailing market which drive out other insurance brokers and independent insurance agents from



competition and as a result they are losing their jobs and business. Through the present information the Informant seeks a direction from the Commission to order IRDA to repeal the said regulations which allows imperfection in insurance retailing market.

10. It may be noted that IRDA has been set-up under the Insurance Regulatory and Development Authority Act, 1999 to provide *inter alia* for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto. It may be pointed out that IRDA in exercise of the powers conferred by sub-section (2) of section 114A of the Insurance Act, 1938 read with sections 14 and 26 of the IRDA Act, 1999 in consultation with the Insurance Advisory Committee, made the impugned regulations.
11. In this connection, it may be further observed that the term 'enterprise' has been defined in section 2(h) of the Act as a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.
12. A perusal of the definition would reveal that for an entity to fall within the definition of the term enterprise it must be engaged in any activity which is relatable to the economic and commercial activities specified therein.



13. In the present case, IRDA while discharging its regulatory and statutory mandate cannot be said to fall within the purview of the term enterprise as defined in section 2(h) of the Act.

14. Regulatory actions are not *per se* amenable to the jurisdiction of the Commission. In this connection, the following observations of the Commission made in the matter of *Krishna Mohan Hospital & Allied Medical Research Centre Private Limited v. The Secretary, Ministry of Agriculture & Co-operation & Ors.* in Case No. 75 of 2011 are pertinent:

“...It may be noted that the FCI and CWC/ SWCs are discharging their statutory functions within the framework of their respective laws viz. the Food Corporation Act, 1964 and the Warehousing Corporations Act, 1962 within the overall policy framework of the Government of India. Reliefs sought for by the Informant relate to the policy domain and as such cannot be granted...”

15. The other allegations made in the information against unknown entities are general in nature besides being unsubstantiated and misconceived due to misreading of statutory scheme by alleging collective dominance and as such do not fall within the mischief of sections 3 and 4 of the Act. The Informant has failed to establish as to how the said provisions are applicable in the present case.

16. In the result, no case is made out which warrants interference by the Commission in the present matter.

17. In view of the above discussion, *prima facie*, the issue of abuse of dominance by IRDA does not arise and no case of contravention of the provisions of section 4 of the Act is made out against IRDA and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.



18. It is ordered accordingly.

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

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

New Delhi

Date:12/09/2014