COMPETITION COMMISSION OF INDIA

ORDER UNDER SECTION 26(1) OF THE ACT
Case No. 49/2010

INFORMANT: - **Association of Third Party Administrators**
K-45 Kailash Colony, New Delhi 110048

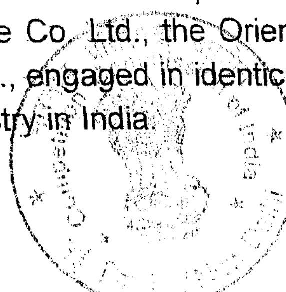
RESPONDENT: - **GENERAL INSURERS (PUBLIC SECTOR) ASSOCIATION OF INDIA (GIPSA)**
3rd Floor, (Rear wing) Jeevan Vihar Building, Parliament Street, New Delhi-110001

As per R. Prasad and P.N.Parashar (Dissenting)

FACTS OF THE CASE

1. The present information has been filed by the Informant, the Association of Third Party Administrators, which is a Trust registered under the Trust Act, 1882 comprising of 27 licensed TPAs who are individually licensed by the Insurance Regulatory and Development Authority of India (IRDA) under the Third Party Administrator Health Services Regulations 2001, framed under sections 14 and 26 of the Insurance Act, 1938. These TPAs are providing services to the policyholders of the different insurance companies licensed by IRDA by processing their insurance claims and providing cashless and non-cashless facility to the insured by negotiating with the hospitals/nursing homes that render health care services and facilities in India.

2. The respondent (GIPSA: General Insurance' (Public Sector) Association of India), on the other hand, is a voluntary association and coordinating body for four non-life Indian public sector insurance companies, i.e. National Insurance Co. Ltd., the New India Assurance Co. Ltd., the Oriental Insurance Co. Ltd. & the United India Insurance Co. Ltd., engaged in identical and similar provision of services of Health Insurance industry in India.



3. **ALLEGATIONS**

   i) It has been alleged by the informant that the respondent, GIPSA, on 14.08.2010 invited an Expression of Interest for Joint Venture Partner in

setting up a Third Party Administrator (TPA) for providing "Health Insurance Claims Management Services" jointly on behalf of the four constituent members of the respondent and offered the TPA equity up to 26% in the proposed Joint Venture.

ii) The eligibility conditions given in the EoI for selecting the TPA include, inter alia among others, having a net worth of Rs. 250 Cr; profit in previous 3 out of 5 years, and experience of processing 5 lakh claims in the preceding 3 years. It is also mentioned in the EoI that the applicant should have business experience of one or more health care or health insurance claims management in the market other than India for at least five years.

iii) That the eligibility conditions, stated above, have been fixed in such a way that the existing TPAs are out from the health insurance market and these four companies will have only one TPA as a Joint Venture partner. The decision on the part of the GIPSA to enter into JV with one TPA will practically eliminate all other TPAs in the market. Presently there are 27 TPAs in the market and each of these insurance companies is served by 10-20 TPAs for cashless facility and claims management.

iv) The informant has alleged that the four companies which together constitute 60% market shares in health insurance market hold a dominant position in the health insurance market and is abusing their dominance by imposing unfair and discriminatory conditions in inviting an EoI for forming a joint venture with one TPA for providing health insurance service in India, contravening the provisions of section 4(a) (i) of Competition Act.

v) These four companies holding a dominant position in health insurance market by having 60% market share are using their dominant position in the market of health insurance to enter into the market of TPA, contravening thereby the provisions of section 4(2)(e) of the Competition Act.

vi) That the four subsidiary companies of GIC engaged in the provision of health insurance services, in the name of an association (GIPSA), have formed a cartel to determine the insurance premium being charged from the policy holders and to limit or control the provision of health insurance services to the policy holders.

vii) That if GIPSA is allowed to go ahead with this tendering process, the market access to health care industries will not only be denied to the new entrants, it may also drive existing TPAs out of the market and as a result the entire competition in this market will be foreclosed.

FINDING ON MERIT

4.1 The first allegation is that these four companies which together constitute 60% market shares in health insurance market hold a dominant position in the health insurance market and is abusing their dominance by imposing unfair and discriminatory conditions in inviting an EoI for forming a joint venture with one TPA for providing health insurance services in India, contravening the provisions of section 4(a)(i) of the Competition Act.

4.2 In order to examine whether these four companies have abused its dominant position by putting unfair and discriminatory conditions in the EoI for setting up a Joint Venture with one TPA for providing health insurance services in India, it is necessary to first find out what is the relevant market in the present case and then whether these four companies are holding dominant position in that relevant market in India which enables them to operate independently of competitive forces prevailing in the relevant market and/ or affects its competitors or consumers or the relevant market in its favour.

4.3 Before determining what the relevant market is in the present case, it is important to understand the health insurance market in India. As per the EOI issued by GIPSA itself, health Insurance has emerged as the fastest growing segment in the non-life insurance industry in India. It is also the second largest segment in terms of overall size (INR 83.05 Bn (~USD 1.8 Bn) in FY10) and thus is a vital business segment for all non-life insurers. There are currently 21 players offering Health Insurance in India with several new players anticipated to enter in the next few years. Health Insurance penetration in India is currently low with private Health Insurance covering only 3% of the population. The Health Insurance industry in India is expected to continue its growth at a Compounded Annual Growth Rate ('CAGR') of 25% over the next five years. The growth in the industry would be driven by rising cost of private healthcare, increase in prevalence of lifestyle diseases on the demand side and significant marketing push by insurers, expansion of provider network and TPAs on the supply side. In addition to this, government schemes such as Rashtriya Swastha Bima Yojana ('RSBY'), which aims to add 60 Mn people each year, are also expected to drive the

growth of the industry. However, Health Insurance has not been a profitable segment for many non-life insurers in India, owing largely to a very high claims ratio (industry average net incurred claims ratio > 100% in FY10). Thus claims management is critical to the profitability of this key segment of the Indian non-life insurance industry.

4.4 The primary role of the TPAs, on the other hand, has been to provide services to the policyholders of the different insurance companies licensed by IRDA by processing their insurance claims and providing cashless and non-cashless facility to the insured by negotiating with the hospitals/nursing homes that render health care services and facilities in India. The TPAs are paid a fee negotiated with the insurers at certain percentage of the insurance premium and in certain cases on per member or per service basis. The introduction of TPAs as authorized entities in the health care service chain was done with a view to ensure higher efficiency, standardization, providing cashless healthcare services to policyholders and increasing penetration of health insurance in the country. They are also potentially equipped to play a wider role in standardization of charges for various treatments and procedures, benefit management, medical management, provide network management, claim administration and maintaining a database of health insurance policies. As per the report of the IRDA the TPAs has played a valuable role in the health insurance system of the country by making available professional capacity for handling health insurance claims, in terms of the wide availability of cashless facility and in terms of the increasing availability of health insurance data. The said report also agreed that evaluation of TPAs in terms of claims ratios alone is not appropriate as this also depends on underwriting and premium charged which are outside their control and thus may not completely reflect cost control that TPAs may have achieved. The above report of IRDA has been obtained from its website. A reference was made to IRDA by the Commission but no reply has been received so far.

4.5 Thus, on the basis of the facts stated above, prima facie it can be inferred that the relevant market in the present case is health insurance in India. Now, it has to be found out whether these four non-life insurance companies which have formed GIPSA are dominant in the health insurance market? In the introduction chapter of the EoI issued by the GIPSA, it is clearly mentioned that "the GIPSA Member Companies holding a dominant position in the Health Insurance industry in India and aspire to remain at the forefront

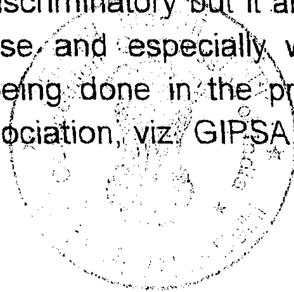
by leveraging on their inherent strengths of pan-India branch presence, large agent base and strong brand equity with the Indian consumer."

4.6 In view of the claim made by the GIPSA itself stated as above, there cannot be a second thought that the four companies which have formed GIPSA, are holding dominant position in the health insurance market in India. Now, the next step is to find out whether these four companies have abused their dominant position in that relevant market. For this let us again go to EoI issued by these four companies. It is stated in the EoI "as an extension to their existing Health Insurance Business, GIPSA Member Companies are looking to set up a large scale, technology enabled, best- in- class third party administrator for providing health insurance claims management services. The GIPSA Member Companies are looking to improve the profitability of their health portfolio, along with services to their customers, and the proposed TPA would be a strategic driver in this direction. The GIPSA Member companies are keen to partner with a suitable entity which will be offered an equity stake of up to 26% in the joint venture. The proposed TPA joint venture is estimated to require an upfront capital investment of INR 2 Bn (~USD 42.53 Mn) subject to Business plan agreement and finalization, apart from the regulatory requirements."

4.7 Thus, it is clear from the above statement that EoI, has been issued for the following objectives:-

- Since health Insurance has emerged as the fastest growing segment in the non-life insurance industry in India, these four companies are not only trying to protect their market but also vying to expand their existing health insurance business
- Since there are currently 21 players offering Health Insurance in India and several new players anticipated to enter in the next few years so there is a threat to their dominant position
- To improve the profitability of their health portfolio is another objective, and;
- Of course to provide best services to their customers

4.8 There is nothing wrong for any company in achieving these business objectives, but while achieving these objectives if certain conditions are put which is not only unfair and discriminatory but it also denies market access to others, then it is an abuse, and especially when you are holding a dominant position. What is being done in the present case is that these companies by forming an association, viz. GIPSA are trying to enter into a



JV with one TPA by denying market access to other TPAs who are presently 27 in number and in order to eliminate them from the relevant market certain conditions such as having a net worth of Rs. 250 Cr, profit in previous 3 out of 5 years, and experience of processing 5 lakh claims in the preceding 3 years and having business experience of one or more health care or health insurance claims management in the market other than India for at least five years. Thus, prima facie these conditions are not only unfair and discriminatory but it may result into limiting or restricting the provision of health services in India and eventually all policy holders may be affected. Particularly, the last clause that having business experience of one or more in the market of health insurance other than India for at least 5 hyears would practically eliminate all Indian TPAs and only foreign TPA would be eligible. It is mentioned in the EoI that these companies intend to reduce the claimj which may affect the policy holders. It is needless to say that more the competition, more the benefits to the consumers i.e. lower prices, better products, wider choice and greater efficiency.

5. The second allegation is that these four companies are using their dominant position in the market of health insurance to enter into the TPA market contravening thereby the provisions of section 4(2)(e) of the Competition Act.

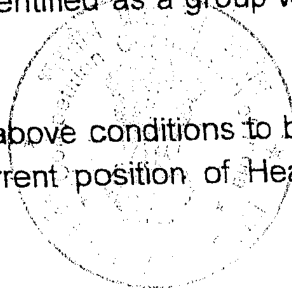
5.1 It has already held in the preceding paragraphs that these four companies are holding dominant position in the health insurance market. However, there is another market of TPAs which have been created by IRDA under the Third Party Administrator Health Services Regulations 2001, framed under sections 14 and 26 of the Insurance Act, 1938. The system of TPAs was created with a view to ensure higher efficiency, standardization, providing cashless healthcare services to policyholders and increasing penetration of health insurance in the country. As per the report of the IRDA the TPAs have played a valuable role in the health insurance market of the country by making available professional expertise for handling health insurance claims, in terms of the wide availability of cashless facility and in terms of the increasing availability of health insurance data. Thus, their existence and usefulness cannot be altered or challenged. The nature of service being provided by TPAs and the health insurance companies are entirely different. While the job of the Health Insurance Companies is to do health insurance business by charging premium on the services provided to their policy holders, the job of the TPAs is to process their insurance claims and to provide cashless and non-cashless facility to the insured. Thus, there

are two relevant markets- one is health insurance market and another is TPA market. There are about 30 players in the health insurance market whereas 27 players in TPA market. So, what these four companies are trying to do is to process and serve the claims of the policy holders through only one TPA and that is why they have invited EoI for the joint venture partner for providing health insurance claims management services. Since, these four companies are holding dominant position in the health insurance market; they are intending to leverage their dominance to enter into the TPA market. So, if this joint venture is allowed to be formed, there will be no competition in the TPA market. This single TPA will have the largest market share of the TPA market and it is very much likely that it may abuse its dominance in that relevant market. Similarly, other competitors will also be forced to adopt the same strategy and as a result, the entire competition will be eliminated, the price of services will go up and the quality of services will go down.

6. Another allegation is that these four subsidiary companies engaged in the provision of health insurance services, in the name of an association (GIPSA), have formed a cartel to determine the insurance premium being charged from the policy holders.

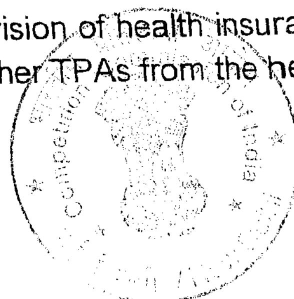
7. Section 3(3) of the Act deals with the following situations:-
(i) The agreements entered into between the enterprises, or
(ii) Any practice carried on by them, or
(iii) Any decision taken by them and
(iv) Containing the terms set out in clauses (a) to (d) which in substance are fixing prices, limiting or controlling supply of goods or services or technical development, sharing the market, and bid-rigging or collusive bidding. If the above conditions are satisfied, it shall be presumed to have an appreciable adverse effect on competition. They are deemed to be in per se violation of Section 3 and the onus is on the party to disapprove this claim. The classes of parties to an agreement dealt with by section 3(3) are; enterprises, associations of enterprises; persons or associations of persons and they could act in any combination. It is that they are to be an association of persons or enterprises of services. Where the association of persons or enterprises is publicly identified as a group with a unity of purpose they are named as Cartel.

7.1 In order to find out the above conditions to be satisfied in the present case, let us examine the current position of Health Insurance Market in India.



What is happening in the health insurance market is that the numbers of competitors are increasing day by day. The presence of foreign companies in the insurance market is at present limited to 26% of the total market and is likely to be opened further. Thus, there is going to be a very tough market and naturally these companies are trying to consolidate their position. That is the reason why they have come together and formed an association namely, GIPSA. The present system is that each of these four companies is doing their health insurance business independently and there is a tough competition among themselves, apart from the other competitors, to capture the market. These four companies are subsidiary companies of GIC (General Insurance Corporation), which is a holding company. GIC is responsible for issuing policy guidelines to all its subsidiaries and coordinates among these four subsidiaries. So, when there is a coordinating body for the four companies what is the need of forming an association? It is mentioned in the EoI that GIPSA is a Voluntary Association of, and the coordinating body for, the four Non-Life Indian Public Sector Insurance Companies, viz., National Insurance Co. Ltd., the New India Assurance Co. Ltd., the Oriental Insurance Co. Ltd. & the United India Insurance Co. Ltd., in the matter of common interest of the four Member companies. Thus, the intent and purpose of forming this association is quite clear that these four companies in the name of association have formed a cartel to control the provision of health insurance services in India. The Expression of Interest for forming a joint venture is nothing but to circumvent the provisions of Competition Law in the name of efficiency. The efficiency, however, is not going to increase but instead it will foreclose competition by driving out the existing competitors from the health insurance market in India. So, prima facie, it is a case of cartelization.

8. Besides above, there are some more issues involved in this case, which also need to be examined, though, these issues have not been raised in the Information. It has already been held that the association formed by these four companies to form a joint venture to appoint one TPA is nothing but a cartel. Thus, the agreement among the four companies to go for a joint venture is ab initio void as this arrangement is anti-competitive and likely to cause an appreciable adverse effect on competition in India. Similarly, it also infringes the provisions of section 3(4)(b) of the Competition Act as the health insurance companies and the TPA, which are in two different levels of production chain in the provision of health insurance services in India are restricting, and eliminating other TPAs from the health insurance market by



way of having exclusive supply agreement. Thus, this is anti-competitive and needs to be examined.

9. To conclude, on the basis of the facts stated above prima facie this is a fit case where provisions of Section 3(1), 3(3), 3(4) and Section 4(2) (a)(1), (b), (c) & (e) of the Act appear to have been contravened and therefore, Director General is directed to cause an investigation into the above allegations under Section 26(1) of the Act.