

# COMPETITION COMMISSION OF INDIA

Case No 49/2010

Dated: 08/07/2011

**Information filed by:** Association of Third Party Administrators.

**Information against:** General Insurers (Public Sector) Association of India

## Order Under Section 26(2) Of Competition Act, 2002

The present information has been filed on 03.09.2010 under Section 19 of the Competition Act, 2002 ('Act') by the Association of Third Party Administrators ('Informant') against General Insurers (Public Sector) Association of India ('Opposite Party').

2. The brief facts of the case are as follows:

2.1 The members of the Informant association are individually providing service to the insured by processing their insurance claims and providing cashless and non-cashless facility to the insured on behalf of the General Insurance Companies. The Opposite Party is a voluntary association of four public sector General Insurance companies viz., National Insurance Company Ltd, The new India Assurance Company Ltd., The Oriental Insurance Company Ltd., and United India Insurance Company Ltd.

2.2 The informant has alleged that the Opposite Party brought out an invitation for Expression of Interest (EOI) for setting up a Joint Venture to make a Third Party Administrator (TPA) for providing health insurance claims management service jointly on behalf of its 4 constituent members. As per the Informant, through the EOI, the Opposite Party is proposing to enter into an anticompetitive agreement which would cause an appreciable adverse effect on competition within India and the members of Opposite Party have formed a cartel through their EOI.

- 2.3 The Informant has also alleged that the main object of forming the joint venture by the Opposite Party is clearly manifested from the EOI that the members of the Opposite Party are looking to improve the profitability of their health portfolio.
- 2.4 It has been further alleged that the proposed Joint Venture TPA would have absolute powers to arbitrarily reject the claims of the insured customers because claim reduction is an explicit criterion for the premium sharing between the Opposite Party and proposed TPA. It is also alleged that the proposed joint venture TPA would abuse its dominant position to dictate terms to the network hospitals so as not to service any other TPA or that the other TPAs would not be offered the same prices by network hospitals as compared to proposed joint venture TPA because of their miniscule individual market share.
- 2.5 The informant has also contended that the proposed agreement would result in creation of barriers for new TPA to enter the health service market, as more than 60-70% of the existing health insurance market would not be available to such new entrant TPAs. The existing competitors would be driven out of the said 60-70% of the market and their market would be reduced from the existing 100% to a situation of about for 30-40%.
3. The informant prayed for the following reliefs:
- 3.1 To direct the institution of an enquiry into the violation of the provisions of Section 3 and Section 4 of the Act in the matter.
- 3.2 To direct the Opposite Party not to enter into any anti competitive agreement pursuant to the EOI dated 14.08.2010 or any subsequent amendment thereto and declare void if any agreement has been entered into by it as null and void in pursuance to the EOI dated 14.08.2010
- 3.3 To direct the Opposite Party not to abuse its dominant position.
- 3.4 To declare the Opposite Party, a cartel in terms of Section 2(c) of the Act.
- 3.5 To impose such penalty as deemed fit.

3.6 To award costs of the present proceedings.

4. The informant has also sought interim relief under Section 33 of the Act and has prayed that the Opposite Party be restrained from taking any action pursuant to the EOI dated 14.08.2010 till the disposal of the present information.
5. The Commission considered the matter in its meeting held on 28.09.2010, 13.10.2010, 26.10.2010, 03.11.2010, 23.11.2010/01.12.2010, 16.12.2010 & 19.05.2011. The Informant has also filed the additional details (brief summary and market dynamic analysis of TPAs and health insurance market) dated 25.10.2010. The Informant has raised the following points in its additional submissions:
  - 5.1 The Opposite Party have a combined market share of 60% of the Indian Health Insurance market and with the setting up of one TPA will oust 27 TPAs which are presently operating in the health insurance market.
  - 5.2 Any JV TPA entered into by the Opposite Party in furtherance of EOI invited by it would not only have appreciable adverse effect on competition but would also restrict the entries of new TPAs in the market.
  - 5.3 The Opposite Party by abusing its dominant position is trying to bring down the high claim ratio through arbitrary reduction of claims.
  - 5.4 The proposed JV TPA agreement shall affect the independence of the TPAs and the claims will not be processed on merit as the TPA itself will be having financial stake in the venture. The Opposite Party is attempting to control the market in an illegitimate manner which is the contravention of Section 3(3) of the Act.
  - 5.5 The efficiency and innovativeness of the TPA shall be affected because the consumer will have no option but to approach only one TPA irrespective of TPA's performance.
  - 5.6 The Opposite Party is indulging in collusive bidding which is contravention of Section 3(3)(d) of the Act.

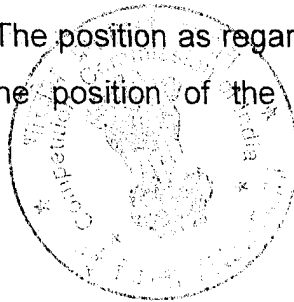
- 5.7 JV TPA would also lead to the situation where the Opposite Party constituents would refuse to deal with the existing TPAs which is a violation of Section 3(4)(d) of the Act.
6. The Commission has also sought comments of IRDA but no response has been filed till date. The Commission has carefully scrutinized the information, the documents annexed, the additional details filed and the oral submissions advanced by the Informant.
7. It is noted that health insurance is an important mechanism to finance the health care needs of the people. To manage problems arising out of increasing health care costs, the health insurance industry had assumed a new dimension of professionalism after the introduction of TPAs. TPAs were introduced by IRDA in the year 2001. The core function of a TPA is to ensure better service delivery to policyholders. The notification of IRDA dated 17.09.2001 defines TPA as:

*"TPA" means a Third Party Administrator who, for the time being, is licensed by the Authority, and is engaged, for a fee or remuneration, by whatever name called as may be specified in the agreement with an insurance company, for the provision of health services;"*

8. Thus, it is seen that the basic role of TPA is to function as an intermediary between the insurer and the insured to facilitate cash less service at the time of hospitalization or claim settlement.
9. It is also noted that the IRDA has issued regulations {The IRDA (Third Party Administrators - Health Services) Regulations, 2001} for governing the TPAs business. As per the above regulation, a company with a share capital and registered under the Companies Act, 1956 can function as a TPA. The main or primary object of the company should be to carry out business in India as a TPA in the health services, and on being licensed by the IRDA, the company shall not engage itself in any other business. The regulations further prescribed that more than one TPA may be engaged by an insurance company and, similarly, a TPA

can serve more than one insurance company. A license granted to a TPA may after due notice be revoked or cancelled by the IRDA for one or more of the reasons as provided in regulations. So, it has been noted from the above that the IRDA has a supervisory and regulatory role in governing the TPA business in India.

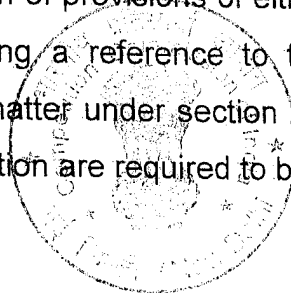
10. Considering the facts of the case the Relevant Market in the present case would be *the market of services provided by the Third Party Administrators (TPAs) to various health insurance policy holders and non life insurance companies within India.*
11. As per the information available in public domain on the website of the IRDA there are 27 TPAs licensed in India till 31.12.2009. More than one TPA may be engaged by an insurance company. One TPA can also serve more than one insurance company.
12. It is observed that Opposite Party's members have published an EOI inviting a Joint Venture partner to act as their TPA. All the four members of Opposite Party are engaged in providing insurance services. As per IRDA regulations, these General Insurance Companies are free to appoint any TPA as long as the party meets the norms. These are also free to directly deal with insured persons, if they so decide. TPAs are nothing but agents of insurance companies for facilitating claim processing or settlement. TPAs are always appointed by Insurance companies from their empanelled TPAs. The consumer has no role in the selection of the TPA. The consumers are being served by individual empanelled TPAs of the respective insurance company. After the formation of joint venture TPA by the Opposite Party, it may appoint the JV TPA as the TPA for some or all of their customers. The position as regards appointment of a TPA would not change and hence the position of the customer would remain unaffected.



13. It can't be disputed that every person or legal entity is free to do any trade or business subject to the relevant law of that business and Government policies. The member of the Opposite Party have the freedom of forming any joint venture or doing any other business if the same is well within the purview of the relevant law unless there is some apparently strong competition issue involved.
14. It is pertinent to mention here that the perusal of the EOI invited by the Opposite Party reveals that the only objective of the proposed JV is to reduce the mounting losses under the health insurance portfolio and to improve the customer service and create bench marking standard for the same. A TPA does not offer any independent service to the insured person but only receives a fee from the insurance company and settles claims as per the regulations of the insurance company and rates fixed by the company. In this, actually, it is the insurance company that is buying the services of a TPA and hence insurance companies are in the position of a consumer. If a consumer exercises its consumer choice and chooses one particular service provider over another or if it decides to do the task itself or through an entity created for the purpose, there is nothing anti-competitive about this economic decision.
15. After the formation of said JV TPA, the overall situation in the market for non-life insurance in India would remain the same for the consumer. The consumer will be served by a TPA selected by the insurance company as before and it would be open for the other TPAs to strive for the business of other insurance companies. If members of Opposite Party form a JV TPA and feel more satisfied by its services, while the consumer remains unaffected, it would be the case where one entity is "better off" without making another one "worse off"; technically termed as "Pareto Improvement" or "Pareto-optimal move".
16. The proposed JV is clearly with an object to enhance efficiencies and cannot be construed as cartel like conduct. It is also not causing any appreciable adverse effect on competition between various insurance companies of the nature mentioned in section 19(3) of the Act. If the proposed JV proves to be inefficient,

gradually customers would start switching to other insurance companies and the inter-brand competition would resolve the position in the market.

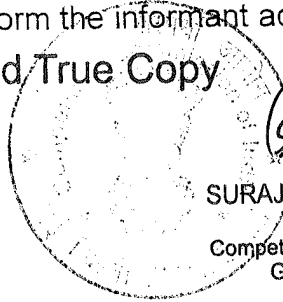
17. The perusal of the material on record reveals that together, members of Opposite Party may have market power in non-life insurance business in India. But, possessing market power, in itself, is not objectionable unless there is any act which can be covered under the purview of abuse under Section 4 of the Act. In this case, there is no *prima facie* indication of any such abuse in the relevant market. Neither the dependence of consumers on the members of Opposite Party is getting affected in any manner through this proposal nor is any of its competitors facing any adversity. The proposed TPA when formed would be just another TPA in the market of TPAs (where insurance companies are consumers) and would have to compete with all other TPAs for acquiring business. At this stage, there is nothing to indicate that the proposed JV TPA of member of Opposite Party would either acquire dominance or abuse it.
18. The issue of an EOI for selection of partner for a yet to be formed joint venture for TPA services can't be termed as anti competitive at this nascent stage. Selection of partners in any business, simple ceter, by no stretch of imagination can be said to be anti competitive as the right of selection of partner or forming joint ventures or partnership can't be denied at this stage on grounds that it precludes competition. Further to anticipate or imagine the emergence of dominance of the proposed joint venture in TPA business is not envisaged under section 4 of the act.
19. In view of the above, and after considering the entire material and submissions of authorized representative of the informant, the Commission is of the opinion that no *prima facie* case of contravention of provisions of either section 3 or section 4 of the Act is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings relating to this information are required to be closed forthwith.



20. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

21. Secretary is directed to inform the informant accordingly.

Certified True Copy



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