

COMPETITION COMMISSION OF INDIA

CASE NO 53/2010

Date: 03.12.10

Mr. Rupesh Sureshbhai Patel

Informant

Verses

The Oriental Insurance Company Limited

Opposite Party

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

The present information has been filed under section 19 of the Competition Act, by Mr. Rupesh Sureshbhai Patel (hereinafter referred as informant) who is the holder of certain insurance/mediclaim policies from The Oriental Insurance Company Ltd. (OIC) (hereinafter referred as OP). The information alleges abuse of dominant position by the OP by influencing the market conditions and restricting the competition between the Third Party Administrators (TPAs). The informant is skeptical of the procedure/standard adopted by the OP in selecting and appointing third party administrators (TPAs).

2 The information in the present case pertains to the TPAs, who act as intermediaries in the health service chain. They are engaged by the General Insurance Companies to ensure better efficiency, standardization in providing cashless health care services to policy holders.

3 The insurance companies like the OP, in order to improve processing of claims, appoint TPAs which are licensed by Insurance Regulatory and Development Authority (IRDA). TPAs play

an active role in processing and settlement of claims. Thus TPAs act as intermediaries between the insurance company and the customers.

4 IRDA has recognized and licensed 27 TPAs to act as intermediaries in the health care service chain. The selection of TPAs from amongst the licensed rests with the insurance company and no criteria /procedures are specifically laid down for such a selection by IRDA.

5 As per the report of IRDA Committee to Evaluate the Performance of Third Party Administrators (Health Services), April 2009 and other material on public domain, a TPA can serve more than one insurer and an insurer can engage more than one TPA.

6 The allegations made in the information filed are as follows :

- 6.1. OP-OIC has shortlisted 8 TPAs out of 15 existing TPAs for empanelment without following any reasonable selection criteria. It has randomly empanelled these TPAs without considering other TPAs in the market or inviting bids. Basis and criteria of short listing and selection has not been disclosed. The TPAs which are not capable of handling the job have been selected, resulting in various complaints being filed against the OP.
- 6.2. The OP-OIC shares a dominant position in the health and general insurance market and is abusing such dominant position to favour a few TPAs, without realizing the ramifications of its actions on the consumers and the market at large.
- 6.3. It is also alleged by informant that the OIC is abusing its dominant position in health/general insurance sector to manipulate and restrict the healthy competition amongst the existing and recognized TPAs.
- 6.4. The informant prayed for the following relief –

- (a) To inquire into the Abuse of Dominant Position by the Respondent

- (b) To direct the Respondent to produce before this Commission all the records and procedures pertaining to the selection and appointment of TPAs.
- (c) To direct the Respondent to stipulate the qualifications for appointment of TPAs in a fair manner
- (d) To direct the Respondent not to appoint TPAs without affording fair opportunity to all the TPAs in the market, to participate in the selection process

7 The informant has filed written submissions vide his letter dated 29.10.2010. The informant reiterated the allegations made by him in the information:

- 7.1 The procedure/criteria adopted by OP in selection of TPAs is not transparent. The selection have been made on pick and choose basis and without giving all of them an equal opportunity in the selection process.
- 7.2 The OP Company, till the year 2000, was a part of the General Insurance Corporation of India alongwith National Insurance Co. Limited, The New India Assurance Company Limited and the United India Ins. Co. Ltd. and enjoy the absolute monopoly in the insurance sector. From Dec. 2000 these subsidiaries were delinked from the General insurance Corporation of India and made independent insurance companies. It has further been submitted by the informant that the OP Company enjoys and continues to hold dominant position in the general insurance sector especially in health insurance sector which enables it to affect its competitors, its consumers and the market in its favour. Presently, out of 18 health insurers, the OP has a market share of about 12-15%. The OP has a gross direct premium income of Rs.3964.26 crores during the year 2008-2009 and the premium income outside India was Rs.113.64 crores. The gross direct premium in India and abroad showed a growth of 4.55%. The net premium income (domestic and foreign) grew by 12.38% from Rs. 2878.67 cr. in 2007-2008 to Rs. 3235.10

crores in the year 2008-2009. The OP has a substantial market share in medical/health insurance.

7.3 It is alleged that TPAs with doubtful integrity are being appointed and many cases were instituted by the CBI and Police against these TPAs and insurance companies. There are complaints of threatening and demanding money by these TPAs and that they are causing problems for the doctors and hospitals. It has been submitted that the OP in the abuse of its dominant position has contravened section 4(2)(b) and (c) of the Competition Commission Act, 2002.

7.4 The OP has health portfolio insurance of more than Rs. 900 crores which would be distributed amongst these 8 TPAs. The OP has not considered whether these TPAs have the right kind of infrastructure, man power, competent software etc. and it has also not been considered whether these TPAs have enough bargaining power in hospitals to get the best rates. The health insurance companies are suffering losses from health insurance due to heavy claims arising out of mismanagement. The bad rates negotiated with hospitals etc. will increase the cost for medical facilities payable to hospitals and consequently leading to increase in premiums. The ultimate sufferer will be the consumer as the insurance company will increase the premium.

8 The Commission has perused the information, written submissions filed on behalf of informant and the material available on record.

9 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 with creation of the institution of TPAs. TPAs were introduced by IRDA in the year 2001. The core service of a TPA is to ensure better services to policyholders. Their basis role is to function as an intermediary between the

insurer and the insured and facilitate cash less service at the time of hospitalization as well as processing of claims.

10 The main grievance of the Informant is that the TPA empanelled by the OIC are tainted and there are allegations of corrupt practices against them. In this context, it is noted that TPAs are licensed through the IRDA and their conduct is governed by The IRDA (Third Party Administrators-health services) Regulation 2001. Regulation 21 prescribes the code of conduct for the TPAs and the license of a TPA can be revoked or cancelled under regulation 13. Regulation 14 (7) envisages action for revocation and cancellation of license for breach of code of conduct. Regulation 21 (2)(d) envisages that 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. In view of the above regulations, in case the informant feels that any TPA is in breach of any regulation, he can approach IRDA for initiation of any action against the TPA for the suppression of any adverse report by any particular TPA.

11 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 that have to be provided and the remuneration payable to the TPA by the insurance company. More than one TPA can be engaged by the insurance company. Similarly a TPA can serve more than one company. Thus, the terms and conditions between the insurance company and TPA are governed by the inter-se agreement between them.

12 This is a case where the unilateral conduct of OP is being challenged. There is no evidence to suggest that the selection of TPAs is a result of any concerted action or collusion or joint decision taken by OP and some other insurance companies, as envisaged under section 3(3) of Competition Act, 2002.

13 The informant has not filed information about any agreement entered between TPA and particular insurance company. Every person or legal entity is free to do any trade or business subject to the relevant law of that business and Government policies. There are other insurance companies for whom the other TPAs can provide their services. The TPAs are licensed and supervised by the IRDA and the insurance companies have no role in the licensing and the entry of the TPAs. Moreover, In this case the insurance company is purchasing the services of a TPA and is in the position of a consumer within meaning of the world as per S.2 (f). A consumer is free to select a service provider and decide the criterion for selection. Hence, there is no case of violation of Section 3 of the Act.

14 Further, there is no *prima facie* appreciable adverse effect on competition in terms of Section 19(3). For Section 19(3), 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 have appreciable adverse effect of competition. Information available in public domain shows that there is a healthy state of competition in the insurance market. Moreover, if the said act of OP were to affect the policy holders' interest adversely, they would shift to other available options in this competitive market.

15 As per the information available in public domain on General Insurers (Public Sector) Association of India (GIPSA), the collective market share of members of GIPSA is 60% and the OIC is one of the 4 members of the above association. There are many other players in the market of health insurance services. As per the presentation of KPMG-CII in Health Insurance Summit, 2008, the market share of OIC in health insurance market during FY 2008 had been only 11%. The informant has also admitted the market share of OP about 12-15%.


16 There is no material available on record or on the public domain that the Oriental Insurance Company is enjoying a position of strength in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. Thus, The Oriental Insurance


Company cannot be said to be in a dominant position in terms of explanation (a) to section 4 of the Act.


17 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 there is not sufficient evidence to support the allegations, as made out in the information. The Commission is also of the view that the OP does not appear to have dominance as per explanation to section 4 of the Act. The informant has also not been able to place any credible or cogent evidence/material to show or establish the infringement of section 3 or 4 of the Act in this case and hence the allegations made by the informant have remained unsubstantiated and uncorroborated. The Commission, therefore, is of the view that no *prima facie* case 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.

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


19 Secretary is directed to inform the informant accordingly.


Member(G)


Member(R)


Member(P)


Member(GG)


Member(T)