



सत्यमेव जयते



Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 21 of 2020

In Re:

**Automotive Tyres Manufacturers Association
PHD House, 4th Floor, Siri Institutional Area
Opp. Asian Games Village
New Delhi - 110016**

Informant

And

**General Insurance Corporation of India
"Suraksha", 170, Jamshedji Tata Road
Churchgate, Mumbai - 400020**

Opposite Party

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 ("Act") by Automotive Tyres Manufacturers Association ("**Informant**") against General Insurance Corporation of India ("**Opposite Party**")/ "**GIC Re**") alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant is stated to be a representative body of the Indian tyre industry representing eleven major tyre companies in India, accounting for over 95% of the total tyre production in the country. It works towards promoting and safeguarding the interests of the tyre industry in India primarily by acting as conduit between the Government and the industry. It is also stated that GIC Re was formed in pursuance of



nationalisation of the entire general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972 for the purpose of superintending, controlling and carrying on the business of general insurance. In November 2000, GIC Re was re-notified as the Indian re-insurer, through a notification issued by the Ministry of Finance. GIC Re is a state-owned enterprise in India and stated to be the sole reinsurance company in the Indian insurance market until 2016, when the insurance market was opened to foreign reinsurance players.

3. The primary grievance of the Informant emanates from the circular dated 12.02.2019 issued by GIC Re applicable to all the domestic insurance companies who hold their Fire Surplus Treaty with GIC Re. It has been alleged that *vide* the said circular, GIC Re had exorbitantly increased the reinsurance premium, being charged to general insurance companies, with effect from 01.03.2019. Reinsurance is described as an insurance for insurance companies. It is a way for the insurance companies to transfer some of the financial risk they assume when issuing insurance policies. Through this, insurance companies cede some of their risk to another reinsurance company (the reinsurer), *e.g.* GIC Re. This protects the insurance companies against circumstances where they do not have enough money to pay out all the claims owed. The Informant has also stated that GIC Re effected further changes (with respect to increase in premium rates), effective from 01.01.2020, to the Fire Treaties of various insurance companies.
4. It is the case of the Informant that due to such increase in the reinsurance premium by GIC Re, the policyholders such as the members of the Informant are required to pay unfairly high and exorbitant premium rates for their insurance policies with the general insurance companies. The Informant also states that its members, as a policy, at their own expense, implemented state-of-the-art safety measures to minimise risk of loss. The Informant has alleged that an exorbitant increase in premium on reinsurance services is an abuse of its dominant position by GIC Re, being '*unfair/excessive pricing*' in terms of Section 4(2)(a)(ii) of the Act.



5. It has also been averred that in order to redress this concern, various representations were made before various authorities including GIC Re, Ministry of Finance, Insurance Regulatory Development Authority of India (IRDAI), *etc.* However, no corrective action was taken by these authorities.

6. It has been further submitted that the Circular dated 12.02.2019 issued by GIC Re was challenged by pharmaceutical companies in various writ petitions filed before the Hon'ble High Court of Delhi against the arbitrary and exorbitant increase in the re-insurance premium rates. However, the same were dismissed as unmerited, along with the observation that the issue of quantum of the premium fixed by GIC Re for providing reinsurance to various insurance companies was, plainly, within the commercial wisdom of GIC Re and would warrant no interference in proceedings under Article 226 of the Constitution of India. The Informant further reveals that the aforesaid order was challenged before the Division Bench of the Hon'ble High Court of Delhi. The Division Bench, finding no error in the Learned Single Judge's decision, dismissed the appeals with the observation that if the appellants have any grievance they should take up the issue with the IRDAI, which is the sectoral regulator and competent to deal with the matter.

7. Further, the Informant has averred that GIC Re receives statutory cession of 5% on every general insurance policy in India, subject to certain limits, which means that all insurance companies operating in India have to mandatorily cede or transfer 5% of their liabilities under the insurance policies issued by them to GIC Re. Thus, unless and until GIC Re refuses to take up the risks of a reinsurance contract, no other enterprise is in a position to offer such services. The Informant has alleged that GIC Re's conduct in the present case is an evident violation of Section 4(2)(c) of the Act, as it operates in market structure where the regulations are unfairly placed in its favour and thereby limits the options to avail similar services from its competitors. Such conduct amounts to denial of market access to both the competitors and the end customers/policyholders.



8. The Informant has also alleged that GIC Re has recently directed insurance companies for exclusion of coverage for infectious/contagious diseases from all continuing insurance policies. The Informant states that under these circumstances, should an insurance company wish to offer coverage of damages/losses against infectious/contagious diseases, the same would result in GIC Re waiving its reinsurance coverage. This 'take it or leave it' practice of GIC Re is grossly anti-competitive and clearly falls within the purview of '*refusal to deal*' under the provisions of Section 3(4)(d) of the Act.
9. It has been further alleged that GIC Re dictated to the insurance companies that in case any discounts are offered on the specified minimum rates by them to the policyholders, such policies shall not have reinsurance support. Therefore, GIC Re has resorted to '*resale price maintenance*' by not allowing insurance companies to determine the discounts that can be offered to policyholders on the premium rates charged for risk coverage which is alleged to be a violation of Section 3(4)(e) of the Act.
10. Finally, the Informant has also alleged that the insurance companies are compelled to blindly follow the aforesaid diktats of GIC Re which clearly evidence the fact that the insurance companies who have fire treaties with GIC Re are engaging in a '*hub and spoke*' cartel at the behest of GIC Re and thus, violating the provisions of Section 3(3) of the Act.
11. Based on the above averments and allegations, the Informant has, *inter alia*, prayed the Commission to institute an inquiry under Section 26(1) of the Act to investigate the alleged anti-competitive conducts in terms of the provisions of Sections 3 and 4 of the Act, adopted by GIC Re.
12. After perusing the Information, the Commission decided to seek response of GIC Re on the allegations made in the Information.



सत्यमेव जयते



13. Based on perusal of the material available on record, the Commission notes that the gravamen of allegations of the Informant appears to emanate out of the implementation of the circular dated 12.02.2019 by GIC Re resulting in alleged significant increase in insurance premium for the policyholders of the members of the Informant. The Informant has alleged violation of different provisions of Section 4 as well as Section 3 of the Act and the same are being dealt with hereinafter in this order.

14. For analysing the allegations in terms of the provisions of Section 4 of the Act, the first requirement is to delineate the relevant market as per Section 2(r) of the Act. In this regard, the Informant has submitted that by the very nature of the industry, reinsurance is a service that cannot be substituted by another. Therefore, insurance companies are bound to avail the services of reinsurance before being able to underwrite any risk they cover for any policyholder. Accordingly, the relevant product market in the present case has been delineated as 'the market for reinsurance services'. In relation to relevant geographic market, the Informant has submitted that the hike in premium as imposed by GIC Re is not limited to a certain geographical region. Further, as per the submissions of the Informant, the terms and conditions for reinsurance are homogenous across the country. Accordingly, the Informant stated that geographic extent of the relevant market is 'the entire territory of India'. In view of the foregoing, the Informant has delineated the relevant market as the '*market for provision of reinsurance services in India*'. For the purpose of the present matter, the Commission agrees with the definition of relevant market as proposed by the Informant for the reasons detailed above.

15. After delineating the relevant market, the next step is to assess the dominance of the Opposite Party in the relevant market. For the said purpose, GIC Re has been identified by the Informant as the sole reinsurer in the domestic reinsurance market. It has been averred that there is only one other Indian entity, apart from GIC Re, which is providing reinsurance services in India, *i.e.* ITI Reinsurance Limited. The Informant has also provided the market share data of the reinsurance service provider having operations in India, on the basis of net written premium for the financial year 2017-18 based on



सत्यमेव जयते



which, the market share of GIC Re is stated to be more than 90%. Further, as per data published by IRDAI, market share of GIC Re is around 80% on the basis of segment wise premium on reinsurance accepted for the FY 2018-19. Other factors referred to by the Informant for establishing dominance of GIC Re in the relevant market include statutory provision for 5% cession with GIC Re, size and resources of the enterprise, size and importance of the competitors, economic power of the enterprise including commercial advantages over competitors, dependence of consumers on the enterprise and countervailing buying power, *etc.* Based on these submissions of the Informant, it appears that GIC Re is the dominant enterprise in the relevant market for provision of reinsurance services in India.

16. On abusive conduct, the Informant has alleged that the blanket imposition of exorbitantly high premium rates on the Informant and other entities pursuant to the circular dated 12.02.2019, without accounting for mitigating factors implemented by its members, is abusive and discriminatory in nature. The Informant has alleged the same to be '*unfair/ excessive pricing*' and thus a violation of provisions of Section 4(2)(a)(ii) of the Act.
17. Having considered the Information and the averments made therein, the Commission notes that similar issues were considered by the Commission in Case No. 12 of 2019 wherein Indian Chemical Council alleged abuse of dominant position on the part of GIC Re for the same circular. However, the Commission did not find any merit in the said Information and closed the case under Section 26(2) of the Act *vide* order dated 26.07.2019. While closing the case, the Commission specifically noted that:

".....The said circular cannot be said to be anti-competitive, merely because it leads to enhancement in premium. It may not be appropriate on the part of the Commission to delve into aspects relating to quantification of premium and deciding whether any enhancement thereof is unjustifiable since a pure pricing decision cannot be said to give rise to any competition concern unless it is a manifestation of abuse of dominant position. The Commission further notes that the said circular, neither prevents a general insurance company/ insurer to offer



premium at lower rates to a primary insured/ policy holder nor does it prevent general insurance company from opting for an alternate reinsurance company, other than GIC. Therefore, general insurance companies have the freedom to decide their premium rates as well as their reinsurer, irrespective of the said circular...”

18. Moreover, it is noted that the Informant has merely alleged increase in premium rates by GIC Re as “*excessive pricing*” without providing any basis. Setting of premium rates for reinsurance policies would be based on many factors and without proper evidence being furnished before the Commission, the allegations of ‘*excessive pricing/unfair pricing*’ cannot be analysed. Therefore, no case is made out against GIC Re on this count.
19. Alleging violation of Section 4(2)(c) of the Act (*i.e.* denial of market access), the Informant has averred that due to the ownership of GIC Re, coupled with the structure of the market, certain regulations have been enforced that would restrict other reinsurance service providers from being able to operate on a level-playing field with GIC Re. GIC Re has the right of first refusal over all reinsurance contracts in India. In this regard, it is noted that Section 4(2)(c) of the Act provides that practice or practices resulting in denial of market access in any manner on the part of a dominant enterprise would be considered as an abuse of such dominant position. The Informant has alleged that certain regulations have been enforced that would restrict other reinsurance service providers from being able to operate on a level-playing field with GIC Re. In this regard, it is noted that such regulations have not been made by GIC Re and therefore, proceedings, if any, cannot be initiated against GIC Re.
20. Adverting to the alleged contravention of the provisions of Section 3 of the Act, it is noted that the Informant has averred that GIC Re has entered into agreements with insurance companies that by their very nature are anti-competitive and are causing appreciable adverse effect on competition in the market of provision of insurance services. It has been alleged that GIC Re dictated to the general insurance companies in India that in case any discounts are offered on the specified minimum rates by the



सत्यमेव जयते



insurance companies to the policyholders, such policies shall not have reinsurance support. Such conduct on the part of GIC Re is alleged to be in the nature of ‘*resale price maintenance*’ by not allowing insurance companies to determine the discounts that can be offered to policyholders on the premium rates charged for risk coverage and thus, a violation of Section 3(4)(e) of the Act. An extract of the circular is reproduced below:

“Notwithstanding the above, nothing in this clause prevents the Reinsured to offer lower rates than the above to the primary insured, however in all such cases, the risk cannot be ceded to this treaty”.

21. In this regard, it is observed that GIC Re in its submissions has contested the Informant’s claims that reinsurers and insurance companies are in a vertical relationship. GIC Re has asserted that the relationships between policyholders, insurers, reinsurers and retrocessionaire are not the typical “vertical” relationships that is generally understood in the context of competition law. In this regard, the Commission notes that the issue whether the two are placed vertically with each other, is of no significance and consequence since any agreement between two players, which is not captured within the framework of Section 3(4) of the Act, can be appropriately examined within the residual and plenary width of Section 3(1) of the Act. With regard to the alleged conduct of GIC Re, it appears that the impugned clause was also litigated before the Hon’ble High Court of Delhi, in the writ petition as mentioned above, wherein it was *inter alia* observed as follows:

16. *It is relevant to note that the last paragraph to the Circular dated 12.02.2019 clearly stated that nothing stated in the Circular would prevent the re-insured from offering lower rates to the primary insured.*

17. *Mr Sibal had contended that the aforesaid notings was qualified by GIC by stating that “in all such cases, the risk cannot be ceded to this treaty”. He had submitted that the said qualification meant that in the event an insurance company had offered lower premium to the insured, GIC would not re-insure*



सत्यमेव जयते



the risk. He had submitted that this had effectively prevented insurance company from offering lower rates to the petitioners. This contention is unmerited in view of the clarification provided by Mr Bhushan, the learned counsel appearing for GIC. He stated that the meaning of the said clarification is that the GIC would not re-insure the risk at a rate lower than as indicated in the said Circular. He submitted that the rates as specified therein only pertain to the insurance premium chargeable by GIC for re-insurance. Thus, the insurance company was free to offer lower rates to the insured. However, for the purposes of re-insurance, they are required to pay the premium as indicated in the endorsement dated 12.02.2019 (referred to as 'Circular' by the petitioners).

22. Based on the above, it appears that the insurance companies have commercial freedom to price their policy as they deem fit according to the market conditions and GIC Re has not placed any restriction on insurance companies to offer products to their customers. Accordingly, the Commission is of the view that allegations of resale price maintenance on the part of the OP, in terms of Section 3(4)(e) of the Act, are not established.
23. It has been further alleged in the Information that GIC Re has recently directed insurance companies to not cover any direct or indirect losses caused by reasons related to contagious disease like COVID-19. This specific exclusion is alleged to be mandated by GIC Re on all insurance companies and is applicable from 01.04.2020. The Informant states that under these circumstances, should an insurance company wish to offer coverage of damages/losses against infectious/ contagious diseases, the same would result in GIC Re waiving its reinsurance coverage. This 'take it or leave it' practice of GIC Re is stated to be grossly anti-competitive and falls within the purview of 'refusal to deal' under the provision of Section 3(4)(d) of the Act. In this regard, GIC Re has, *inter alia*, submitted that on 06.04.2020, it has communicated an endorsement related to exclusion of contagious diseases (Contagious Disease Endorsement) which was brought into effect from 01.04.2020. However, the exclusion of any direct or indirect loss by infectious or contagious disease existed even prior to



the onset of the COVID-19 pandemic. The Contagious Disease Endorsement is only an elaboration of the pre-existing standard terms and conditions forming part of the domestic treaty reinsurance in the preceding years.

24. The Commission also finds merit in the arguments of the Opposite Party that the said Endorsement is not a direction or a mandate to insurance companies/ cedants and thus has no bearing on insurance policies issued by insurance companies to policyholders which are separate and independent contracts. GIC Re has also asserted that Section 3(4)(d) of the Act is not attracted in this case as the Contagious Disease Endorsement does not, directly or indirectly, restrict the insurance companies / cedants from dealing with any person or classes or persons (such as policyholders or from whom they may seek other or further reinsurance). It has also been asserted that there is no restriction (or likely effect of a restriction) on the kind of services or risk coverage that insurance companies may provide to their customers by virtue of the Contagious Disease Endorsement.
25. Based on the above, it appears that the position pre and post COVID-19 pandemic remains unchanged as far as the exclusion of contagious diseases is concerned and the insurance companies are entirely free to offer any kind of insurance to the policyholders. Therefore, any decision by GIC Re in this regard cannot be termed as 'refusal to deal' in terms of Section 3(4)(d) of the Act.
26. It has been further alleged that GIC Re's actions of mandating such exclusions of infectious/ contagious diseases as well as restrictions from providing any discounts to the policyholders, are restricting the operational flexibility of insurance companies in India. The insurance companies are compelled to blindly follow the aforesaid diktats of GIC Re which is stated to be an evidence of a '*hub and spoke*' cartel between the insurance companies at the behest of GIC Re and thus, violating the provisions of Section 3(3) of the Act.



सत्यमेव जयते



27. In this regard, the Commission observes that the Informant has failed to adduce any material in support of its allegation that Insurance companies are using the GIC Re as a platform to exchange sensitive information, including information on prices which may facilitate price fixing or GIC Re is otherwise facilitating any price fixing between the insurance companies. Moreover, as pointed out earlier, GIC has categorically stated that the insurance companies have commercial freedom to price their policy as they deem fit and GIC has not placed any restriction on them in terms of price or coverage of risk. Therefore, the allegation of cartel arrangement between GIC Re and insurance companies is also not made out.

28. In view of the above, the Commission is of the view that no case is made out against the Opposite Party for contravention of the provisions of either Section 3 or Section 4 of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26 (2) of the Act.

29. The Secretary is directed to communicate to the Parties, accordingly.

Sd/-

(Ashok Kumar Gupta)
Chairperson

Sd/-

(Sangeeta Verma)
Member

Sd/-

(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 27 / 01 / 2021