

COMPETITION COMMISSION OF INDIA

06th July, 2010

M RTP Case-UTPE No. 15/2009

Filed: Shri Harish Kumar B. Roongta,
R-606, Stock Exchange Rotunda Building,
Sixth Floor, Bombay Samachar Marg, Fort,
Bombay-400023

Against: M/s. Thomas Cook India Limited (TCIL), Thomas
Cook Building, Dr. D. Naroji Road, Mumbai-400001

ORDER UNDER SECTION 26(2) OF COMPETITION ACT 2002

Consequent upon the repeal of the MRTP Act this complaint has been transferred to the Competition Commission of India under section 66 (6) of the Competition Act, 2002.

2. Factual background

2.1 The complaint was originally filed before the Ministry of Corporate Affairs under the MRTP Act 1969 by Shri Harish Kumar B Roongta against M/s. Thomas Cook India Limited (TCIL) on 20th July 2008 which was subsequently forwarded to the MRTP Commission.

2.2 The complainant alleged that he had been on a tour to Europe in May 2008 conducted by Thomas Cook India Limited (hereinafter referred to as 'TCIL'). The tour charges collected by TCIL were split into two parts, one to be paid in Indian Rupees (INR) and the other in Euro currency. Moreover an amount of Rs. 750/- was charged towards Overseas Insurance Policy which was taken out by Tata AIG General Insurance Co. Ltd. through TCIL which also acts as an Agent of Tata AIG General Insurance Co. Ltd and earns commission for the policies sold on their behalf. The complainant has also alleged that TCIL forced passengers to take the insurance only from them.

2.3 The complainant alleged that at the time of booking of the tour he was told that insurance policy had to be bought through TCIL but if he wished to buy from any other insurance company he was free to do so, however, in that case Rs. 750/- levied towards insurance by the TCIL would not be refunded and thus in fact he was denied the right to choose a product which suited his need and requirement.

2.4 The complainant has further alleged that as one part of the tour cost was required to be paid in foreign currency, the TCIL also forced him to buy the foreign exchange from them at the rates much higher than what was prevailing in the market. Despite the complainant's request the TCIL tried to force him to buy foreign exchange from them only on comparatively higher rate, but after a lot of deliberations and protests, he was given a "special" approval to make the said part payment in Euro currency from his own source but this "special" treatment was not given to other passengers.

2.5 The complainant has further alleged that the conduct of the respondent was in clear violation of rights of a consumer as he was not being treated in a fair manner and was not allowed by the TCIL to exercise the option to choose the insurance company of his choice. The complainant alleged that this practice adopted by the TCIL was detrimental to healthy competition and deprives all the stakeholder viz. other Insurers, small insurance agents, small Forex Dealers etc.

3. The complainant has prayed for following reliefs:

- (i) To direct investigation into such practices.
- (ii) To impose penalty on the TCIL.
- (iii) To provide relief to the public at large from such monopolistic business practices.

4. DG (I&R) sought the comments of M/s Thomas Cook (India) Ltd, Tata AIG General Insurance Co. and Insurance Regulatory and Development Authority (IRDA) and all of them have filed their replies.

4.1 The TCIL in its reply has denied the allegations made against them by the complainant and has stated that though the TCIL is an agent of Tata AIG Insurance Company but it never compelled any passenger to obtain overseas insurance policy from them only. The TCIL has also stated that their company never compelled any customer/passenger to procure the foreign exchange exclusively from them. In this connection TCIL submitted that total number of 29 passengers opted for the tour in question "European Grandeur" including the Complainant and his wife. Out of the 29 passengers, 28 passengers obtained Insurance policies from Tata-AIG and one passenger namely Mr. Tilakaraj Mehra availed of insurance from Bajaj Allianz Life Insurance Company. TCIL also submitted that out of 29 passengers, 27 passengers purchased Foreign

Exchange from them except for Mr. & Mrs. Roongta, who did not purchase Foreign Exchange from source since they were already in possession of Travellers Cheques. TCIL further submitted in their reply that total number of customers/passengers who availed tour packages provided by their agents in the year 2008 were 13,077 out of these about 83% purchased insurance through TCIL arrangements and about 94% of the total customers/passengers, purchased foreign exchange from them. The remaining 17% of the total of 13,077 customers did not purchase insurance and also 6% of the total customers did not purchase foreign exchange through TCIL. Therefore, TCIL submitted that their agents solicit customers for the tours directly but neither have they solicited customers for purchase of insurance policy nor have any agent solicited customers for purchase foreign exchange.

4.2 Tata AIG Insurance Co. has submitted in its reply that:

- a) Thomas Cook (India) Ltd. is a licensed corporate agent of Tata-AIG General Insurance Company Ltd., since 2001
- b) The product (oversea insurance policy) 'Travel Care' being sold by TCIL is underwritten by Tata-AIG General Insurance Company Ltd and has been approved by IRDA, the regulatory authority for insurance in India.
- c) The product charging Rs. 750/- is offered for people who travel overseas to countries excluding USA and Canada.

4.3 The Insurance Regulatory and Development Authority (IRDA) has stated in its reply that M/s. Thomas Cook Insurance Service (India) are licensed as Corporate Agents of Tata AIG General Insurance Company Ltd with License no. 441366 which is valid up to 20.02.2011. IRDA also submitted that corporate agents can distribute Insurance products of One Non-Life and One Life Insurance Company. The corporate agents are regulated as per Provisions of the Insurance Act 1938, IRDA (Licensing of Corporate Agents) Regulations, 2002 and various circulars issued in this regard.

5. At the stage matter has been transferred to this Commission under section 66 of the Competition Act, 2002.

6. The matter was earlier considered by the Competition Commission of India in its meeting held on 16.6.2010 wherein the complainant was asked to file written submissions or appear in the next meeting of the Commission to explain his case. The complainant vide his letter dated 01st July, 2010 stated that he did not wish to make any further submission in addition to those already placed on record nor he appeared in the ordinary meeting held on 06.07.2010. The Commission has considered the, material on record in ordinary meeting held on 06.07.2010.

7. It is evident from the perusal of the record that two allegations have been levelled against the respondent TCIL. One allegation is that the TCIL in the course of conducting tour is forcing the customers to take overseas insurance policy from Tata AIG General Insurance Company Limited through them and in case the customer preferred to take the said policy from some other insurance company on his own he is not being refunded the amount collected in this respect by the TCIL. The TCIL on the other hand denied this allegation and has stated that they have never compelled any passenger to obtain overseas insurance policy through them only. As per the data furnished by the TCIL in year 2008 out of total number of passenger (13077) only 83% of them purchased insurance policy through them whereas remaining 17% took the policy on their own. If this being the case the contention of the complainant that passengers are being forced to take insurance policy only through TCIL loses steam. Since the complainant has not placed any details to the contrary there is no reason to disbelieve the facts furnished by the respondent. This inference finds support from the fact that even the complainant was allowed to take insurance policy from some other company.

8. The second contention raised by the complainant is that the customers are also being forced by the TCIL to procure the foreign exchange exclusively from them also cannot be accepted in view of the factual position supplied by the TCIL wherein 94% of the customers in year 2008 procured foreign exchange through TCIL and rest of them through their own sources. Here also the complainant was allowed to purchase foreign currency i.e. Euro from his own source. The complainant was given the opportunity by the CCI to make his submissions in support of the complaint but he has not availed that opportunity.

9. Moreover, the allegations made by the complainant may at most amount to unfair trade practice on the part of TCIL but since no trustworthy material has been furnished by the complainant to establish the abuse of dominant position by the TCIL the present matter is not covered under the ambit of section 4 of the Competition Act, 2002.

10. In view of the forgoing analysis of the facts and circumstances of the case the complainant has failed to make out a prima facie case and therefore there is no need to refer the matter to the DG for investigation and matter deserves to be closed.

11. In view of the above conclusion the present matter is hereby closed under section 26 (2) of the Act.

Secretary is directed to inform the complainant accordingly.

Member (G)

Member (R)

Member (P)

Member (GG)

Member (AG)

Member (T)

Chairperson



Order of case no:

MRTP Case-UTPE No. 15/2009

1. Member (G)
2. Member (R)
3. Member (P)
4. Member (GG)
5. Member (AG)
6. Member (T)
7. Chairperson