

For Private Circulation only | August 2019

Competition Commission of India upholds GIC Re's Position



In 2007, the IRDAI decided to de-tariff the Indian non-life insurance sector (excluding motor insurance sector), pursuant to which general insurers were free to decide premium rates, based on their experiences and management costs, subject to compliance with guidance provided by the IRDAI.

In 2014, the IRDAI observed that the free market regime coupled with intense competition between the stakeholders had resulted in deficient assessment of insurable risks and the premium rates quoted by insurers were not based on proper assessment of the risks. Accordingly, the IRDAI directed all general insurers to price their fire, property and group health risks in accordance with the process as stipulated under its circular dated November 12, 2014 (“**IRDAI Circular**”). The IRDAI Circular, *inter alia*, required insurers to price their fire risks as per burning cost rates published by the Insurance Information Bureau of India (“**IIB**”) or as per the burning cost of a particular risk, based on the insurer’s own experience, whichever was lower. On March 24, 2017, the IIB released a circular specifying the burning costs to be followed while pricing the insurance products and the insurers where required to follow the rates as prescribed by IIB.

On February 12, 2019, GIC Re issued a circular (“**GIC Re Circular**”) stating that effective from March 1, 2019, general insurers should price fire risks for certain occupancies, strictly as per rates published by the IIB (after taking into account the NAT CAT rate, and appropriate loading based on insurer’s experience and expenses), if such risks were to be ceded to GIC Re. Notwithstanding the above requirements, the insurers were free to offer lower rates to the primary insured provided such risks would not get covered under the reinsurance treaties of GIC Re. Following this development, general insurers took various steps to comply with GIC Re’s requirements, eventually leading to a multifold increase in insurance costs of various insureds, especially for those engaged in rubber and chemical manufacturing and distribution.

Aggrieved by high insurance costs, 4 petitions were filed by pharmaceutical companies before the Delhi High Court challenging the legality of the GIC

Re Circular. The Delhi High Court eventually dismissed these petitions in its order dated April 12, 2019, observing that “...it is at once clear that the petitioners seek a judicial review into the quantum of the premium fixed by GIC for providing reinsurance to various insurance companies. This question is, plainly, within the commercial wisdom of GIC and would warrant no interference in proceedings under Article 226 of the Constitution of India.”

In March, 2019, the Indian Chemical Council also filed information with the Competition Commission of India (“**CCI**”) alleging that GIC Re abused its dominant position in the market, in contravention of Section 4 of the Competition Act, 2002. It was also alleged that GIC Re violated the IRDAI Circular, the Insurance Act, 1938 (“**Act**”) and other regulations of the IRDAI, including the IRDAI (Re-insurance) Regulations, 2018. The CCI made a reference to the IRDAI on alleged violations of its regulations and the Act. The IRDAI responded that GIC Re’s actions did not contravene the IRDAI Circular and were in consonance with the Act and relevant regulations of the IRDAI.

By its recent order of July 26, 2019, the CCI finally concluded that there existed no *prima facie* case of abuse of dominance by GIC Re and that the GIC Re Circular cannot be said to be anti-competitive, merely because it led to enhancement in premium. The CCI further noted that the GIC Re Circular did not prevent an insurer from offering lower premium rates, nor did it prevent an insurer from opting for an alternate reinsurer. Insurers had the freedom to decide premium rates as well as their reinsurer, irrespective of the GIC Re Circular.

A pharmaceutical company, has also approached the Telangana High Court to set aside GIC Re’s Circular on, *inter alia*, the grounds of it being illegal, arbitrary and violative of Articles 14 (right to equality) and 19(1)(g) (right to carry on trade/occupation) of the Constitution of India, as well as the IRDAI Circular. As on date, the petition is currently pending before the court.

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