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## COMPETITION COMMISSION OF INDIA

Suo Moto Case No. 02 of 2014

**In Re: Cartelization by public sector insurance companies in rigging the bids submitted in response to the tenders floated by the Government of Kerala for selecting insurance service provider for Rashtriya Swasthya Bima Yojna.**

**And**

- |   |                             |
|---|-----------------------------|
| <b>1. National Insurance Co. Ltd.</b>     | <b>Opposite Party No. 1</b> |
| <b>2. New India Assurance Co. Ltd.</b>    | <b>Opposite Party No. 2</b> |
| <b>3. Oriental Insurance Co. Ltd.</b>     | <b>Opposite Party No. 3</b> |
| <b>4. United India Insurance Co. Ltd.</b> | <b>Opposite Party No. 4</b> |

**CORAM**

**Mr. S. L. Bunker  
Member**

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

**Appearances:** Shri A. N. Haksar, Senior Advocate with Shri Udayan Jain, Ms. Chitra Parande, Shri K. K. Sharma, Shri Anand Shree and Ms. Hetu Arora Sethi, Advocates for the Opposite Parties.

Shri Anand Sharma, Regional Manager and Shri A. K. Singhal, General Manager for the Opposite Party No. 1.



सत्यमेव जयते



Ms. Radhika Sabarwal, DGM for the Opposite Party No. 2

### **Order under Section 27 of the Competition Act, 2002**

1. The present matter was taken up *suo moto* pursuant to an anonymous information received by the Commission under section 19(1) of the Competition Act, 2002 ('Act') against M/s National Insurance Co. Ltd. ('OP-1'), New India Assurance Co. Ltd. ('OP-2'), Oriental Insurance Co. Ltd. ('OP-3') and United India Insurance Co. Ltd. ('OP-4') (collectively, 'OPs'/ 'Public Sector Insurance Companies') alleging contravention of the provisions of section 3 of the Act.

#### **Facts**

2. It was alleged in the anonymous information that the above named public sector insurance companies rigged the tender floated by the Government of Kerala on 18.11.2009 for selecting insurance service provider for implementation of the 'Rashtriya Swasthya Bima Yojna' ('RSBY') for the year 2010-11. It was also alleged that OPs formed a cartel and quoted higher premium rates in response to the aforementioned tender. A copy of the minutes of the 'Inter Company Co-ordination Committee' ('ICCC') meeting dated 07.12.2009 attended by the officials of OPs in Kochi was also enclosed with the anonymous information where OPs allegedly agreed on a business sharing model.

#### **Directions to the DG**

3. The Commission, after considering the entire material available on record, directed the Director General ('DG') to cause an investigation into the matter through its order dated 12.02.2014 passed under section 26(1) of the Act. The DG, in accordance with the Commission's directives, conducted an investigation and submitted the investigation



सत्यमेव जयते



report ('**DG Report**') on 03.02.2015.

### **Investigation by the DG**

4. The DG conducted a detailed investigation into the actions of OPs relating to the tenders issued by the Government of Kerala in the years 2010-11, 2011-12 and 2012-13 for the implementation of RSBY and 'Comprehensive Health Insurance Scheme' ('**CHIS**'). The DG came to the conclusion that OPs colluded with each other and manipulated the tendering process initiated by the Government of Kerala.
5. While conducting the investigation, the DG examined RSBY scheme, implementation of the scheme in the State of Kerala, tendering process of the Government of Kerala and the nature of ICCC meetings of OPs. The DG specifically looked into the events and circumstances that culminated into the ICCC meeting held on 07.12.2009 and examined witnesses (*i.e.*, company officials closely related to the bidding process), internal documents of OPs, emails exchanged among the officials of OPs, *etc.*
6. From the minutes of the said ICCC meeting, the DG found that the representatives of OPs met on 07.12.2009, *i.e.*, one day prior to the submission of bids, and agreed that OP-4 would secure the L1 position in relation to the tender for 2010-11, while OP-1, OP-2 and OP-3 would secure the L2, L3 and L4 positions respectively. The DG also found that OP-4 actually won the tender for 2010-11 and later on shared its business with OP-1, OP-2 and OP-3.
7. The DG also pointed out that the said tender was issued for a period of three years. However, towards the end of the first year of the contract, OP-4 sought for an upward revision of the premium citing losses. When this request of OP-4 was turned down by the Government of Kerala, OP-4 invoked the exit clause of the contract, thereby, compelling re-



सत्यमेव जयते



tendering.

8. The DG also reviewed the conducts of OPs in relation to the subsequent tenders issued by the Government of Kerala and found that the OPs had colluded to steadily raise the insurance premiums by quoting higher premiums. Further, the DG noted that a clear bidding pattern emerged from OPs' actions. In relation to the tenders issued by the Government of Kerala for the years 2011-12 and 2012-13, the DG found that: (a) OP-4 secured the L1 position and became the supplier under the RSBY and CHIS schemes; (b) OP-4 entered into business sharing arrangements with OP-1 and OP-2; (c) towards the completion of a year, OP-4 requested for an upward price revision and when such requests were denied, OP-4 invoked the exit clause of the contracts, thereby, compelling re-tendering by the Government of Kerala.
9. Further, the DG noted that the price rise effected by OPs could not have been based on any rational business justification as the tender for the year 2013-14 was won by Reliance General Insurance Company Limited at a much lower premium. The awarded contract was even extended with the same premium for the year 2014-15.
10. As per the DG report, OPs formed a cartel and not only quoted higher insurance premium bids in response to the tenders issued for the years 2010-11, 2011-12 and 2012-13; but they also forced the Government of Kerala to issue fresh tenders every year despite the fact that the said tenders were issued for a period of three years. On this basis, the DG concluded that this was clearly a case of contravention of the provisions of sections 3(3)(a) & 3(3)(d) of the Act.
11. The DG also noted that 'Comprehensive Health Insurance Agency of Kerala' ('**CHIAK**'), the agency entrusted to implement RSBY and CHIS schemes in letter and spirit, had actually facilitated continuance of OP-4 as the insurer under these schemes by employing an arbitrary and



सत्यमेव जयते



irrational selection criteria for the period between 2010-2011 to 2012-13.

### **Consideration of the DG report by the Commission**

12. The Commission in its ordinary meeting held on 19.02.2015 considered the investigation report submitted by the DG and decided to forward copies thereof to the parties for filing their respective replies/ objections thereto. The Commission also directed the parties to appear for oral hearing on 07.04.2015 when the counsel for OPs made preliminary submissions. Subsequently, the arguments of OPs were heard by the Commission on 14.05.2015.

### **Replies/ Objections/ Submissions of the OPs**

13. Besides making oral submissions, all OPs have submitted their objections/ responses to the DG Report, raising common issues, by way of, preliminary and substantive submissions followed by para-wise replies. Set out below is a brief summary of the common grounds raised by OPs in their objections/ responses to the DG Report.
14. At the outset, OPs have submitted that the entire DG Report is flawed and is liable to be rejected as the DG committed a fundamental error by not considering that the OPs constituted a 'single economic entity'. OPs have claimed that Government of India holds 100% shares of each of the OPs. Further, management and affairs of OPs are controlled by the Government of India through Department of Financial Services (Insurance Division), Ministry of Finance.
15. OPs have made detailed submissions on the peculiarities of the insurance sector and the differential treatment accorded to this sector in other jurisdictions.
16. OPs have also disputed the findings of the DG on the basis that the



सत्यमेव जयते



conclusions drawn by the DG were solely based on a photocopy of the minutes of an alleged ICCC meeting of the representatives of OPs. OPs have submitted that the DG did not find any other additional documentary or circumstantial evidence establishing cartelization by OPs. Further, the DG failed to consider the fact that the aforementioned minutes clearly recorded that the decision in the ICCC meeting was subject to the approval of a Committee of General Managers of OPs; and that no such approval was taken/ given. The DG also failed to appreciate that the decision taken by representatives of OPs during the ICCC meeting was not implemented as there is nothing to suggest that OP-1, OP-2 and OP-3 were designated as L2 to L4 respectively.

17. OPs have submitted that the DG had erroneously found cartelization by four of OPs when there were seven participants in the tender issued by the Government of Kerala in 2009. Further, the DG failed to consider that bidding process initiated by the Government of Kerala for the implementation of the RSBY Scheme was free and fair. In this regard, OPs have pointed out that in relation to the aforementioned tender of 2010-11, ICICI Lombard General Insurance Co. Ltd. would have secured L1 position had it not been technically disqualified. Further, under the said tender of 2013-14, Reliance General Insurance Co. Ltd. won the bid.
18. OPs have further submitted that the DG erroneously found the premium rates quoted by OPs in response to the said tenders of 2011-12 and 2012-13 were excessive on the basis of a statement made by the representatives of Reliance General Insurance Company Ltd. In this regard, OP-4 submitted that the DG failed to consider the justification proffered by OP-4 that it incurred heavy losses on account of an incentive scheme for hospital staffs implemented by the Government of Kerala which, according to OP-4, induced wrong practices at various government hospitals/ medical institutions. Further, OPs sought to



सत्यमेव जयते



justify the upward revision of the quoted premium rates on the basis that the quoted rates were based on their previous experiences where quantum of claims outnumbered the quantum of premiums received.

19. Further, OPs have contended that the DG's reliance on the emails exchanged between the officers of OPs and the DG's inferences of cartelization and business sharing were erroneous. In this regard, OPs have submitted that: (a) they constituted a single economic entity and, as such, business sharing arrangements were, in fact, entered into by OP-4 with its sister concerns; and (b) this was merely a capacity-building exercise aimed at enhancing efficiencies, such as, co-sharing of risks and losses to protect consumer interests. OPs have also claimed that the business sharing arrangement was mooted by OP-4 on account of the losses suffered by it under the 2008 RSBY tender where the quantum of claims outnumbered the quantum of premiums received.
20. Lastly, OPs have objected to the DG's observations on the tendering process implemented by the Government of Kerala in relation to the RSBY and CHIS schemes. OPs have also opposed the adverse inferences drawn by the DG on account of non-submission of email dumps by OPs and sought to justify the same on account of non-availability of time.

### **Analysis**

21. On a careful perusal of the entire case records, including, anonymous information, the DG Report and the replies/ objections/ submissions filed/ made by OPs, the following issues arise for consideration and determination:
  - (i) Whether the public sector insurance companies *i.e.*, OPs constitute a single economic entity?



- (ii) If finding on the issue No.(i) is in the negative, whether the conduct of OPs have resulted in contravention of any of the provisions of the Act?

**Issue No. (i) : Whether the public sector insurance companies i.e., OPs constitute a single economic entity?**

22. The present case was taken up by the Commission *suo moto* pursuant to an anonymous information alleging cartelization by four public sector insurance companies in relation to a tender issued by the Government of Kerala for the implementation of RSBY and CHIS schemes. A copy of the minutes of the ICCC meeting dated 07.12.2009 attended by the company officials of the above-named public sector insurance companies was enclosed with the anonymous information. These minutes reveal that the 'winner' of said tender was pre-decided by the public sector insurance companies. *Vide* the order dated 12.02.2014, the Commission directed the DG to conduct an investigation into the allegations. In accordance with the Commission's directives, the DG conducted a detailed investigation and found cartelization by these companies during the periods between 2010-11 and 2012-13.
23. The Commission notes that OPs have vehemently opposed the DG's findings on the basis that they constitute a single economic entity. OPs have claimed that until 2002, all OPs were owned by General Insurance Company. It was also submitted that pursuant to the enactment of the General Insurance Business (Nationalization) Amendment Act, 2002, Government of India holds 100% shares of each of the OPs and controls the management and affairs of the companies through Department of Financial Services (Insurance Division), Ministry of Finance.
24. To appreciate the issues projected in the present case, it would be



appropriate to notice the regulatory reforms that were introduced in the insurance sector. In this regard, a reference may be had to the policy reforms introduced by the Government of India in 1991 which led to the de-regulation of the Indian economy. With the commencement of private participation, a need was felt to modify the existing market structure of certain select sectors, including, the insurance sector so as to promote orderly growth of these sectors. In this regard, the Government of India established a committee in the year 1993 under the chairmanship of Shri R. N. Malhotra (former Governor of the Reserve Bank of India) to propose reforms for the insurance sector. Pursuant to the recommendations of the Malhotra Committee, two major regulatory changes were introduced, including, ending the monopoly of General Insurance Company in the general insurance business and ending the control exercised by General Insurance Company over its four wholly owned subsidiaries, *i.e.*, the four public sector insurance companies. The Commission notes that these regulatory changes were ushered in to allow the public sector insurance companies to act independently and to compete with the private players to offer better services to consumers.

25. The Commission notes that although the public sector insurance companies are presently under the overall supervision of the Central Government, each of the OPs placed a separate bid in response to the tenders issued by the Government of Kerala for implementation of RSBY/ CHIS schemes. Further, parties themselves have admitted before the DG that all decisions relating to submission of bids, determination of bid amounts, business sharing arrangements, *etc.* were taken internally at company level without any *ex ante* approval/ directions from Ministry of Finance. Even the decisions taken by the companies were not notified *ex post* to the Ministry. Thus, it is apparent that the OPs participated in the impugned tenders independent of Ministry of Finance and the DG also did not come across any *contra* evidence.

26. In view of the above, the Commission notes that the conducts of OPs in



सत्यमेव जयते



relation to the RSBY/ CHIS tenders issued by the Government of Kerala during the period between 2010-11 and 2012-13 were based on their own volition and the Ministry of Finance had no role to play. On this basis, the Commission holds that the Ministry of Finance did not exercise any *de facto* or *de jure* control over OPs' business decisions in submitting bids for impugned tenders. As such, OPs cannot be said to constitute a single economic unit. Accordingly, the Commission rejects OPs' claims.

**Issue No. (ii): If finding on the issue No. (i) is in the negative, whether the conduct of OPs have resulted in the contravention of any of the provisions of the Act?**

27. As noted above, the Commission is of the opinion that the public sector insurance companies do not constitute a single economic entity. Therefore, the Commission would now proceed to examine if their conducts relating to the implementation of RSBY scheme by the Government of Kerala have violated any of the provisions of the Act.
28. The Commission notes that RSBY is the health insurance scheme introduced by the Central Government for below poverty line ('BPL') families as per the then Planning Commission's list. The task of implementation of this scheme was entrusted to the respective state governments with the Central Government bearing 75% of the expenses incurred in relation to the annual premiums. At the time of implementation of the RSBY, the Government of Kerala widened the scope of the health insurance scheme and launched the CHIS which covered BPL families as per the State Government's list and other poor families.
29. For the first time in the year 2008, the Government of Kerala issued a tender for the implementation of RSBY and CHIS schemes for the



सत्यमेव जयते



selection of the insurance provider. In this regard, bids were invited from: (a) insurance companies licensed and registered with the Insurance Regulatory and Development Authority; and (b) agencies enabled by any central legislation to undertake health insurance related activities. The tender was awarded to OP-4 which supplied insurance services under the contract till 31.03.2010.

30. In the year 2009, the Government of Kerala entrusted the responsibility of implementation of RSBY and CHIS schemes to CHIAK. On 18.11.2009, CHIAK issued a tender for the selection of the insurer for a period of three years commencing from 01.04.2010 under RSBY and CHIS schemes. The closing date for submission of the completed bid documents was 08.12.2009.
31. Seven insurance companies including the OPs submitted the tender documents. The Technical Evaluation Committee ('TEC') formed by the State Government evaluated the bids on the basis of a scoring system. The TEC decided that the companies which scored 50 marks and above (a benchmark set by the TEC through ratings) would be declared successful in the technical rounds. As such, only OP-3 and OP-4 were declared successful and their financial bids were opened in the presence of the representatives of the respective insurance companies. The bid submitted by OP-4 being the lowest evaluated bid, the TEC recommended acceptance of OP-4's bid for implementation of RSBY and CHIS schemes in Kerala for a period of three years subject to yearly basis renewals.
32. The Commission notes that prior to submission of the bids, OPs had held a meeting under the auspices of ICCG on 07.12.2009 at Kochi with the sole agenda to discuss the '*Tender Notice on RSBY dated 18.11.2009 of Government of Kerala*'. The meeting was held "*to discuss about sharing of business and submission of quotation for the above business*". It is apparent from a bare perusal of the minutes of the said



सत्यमेव जयते



meeting that the ICCC meeting was attended by: (a) Shri Rajasekharan, the then Chief Regional Manager of OP-1; (b) Shri Girish Raj, the then Chief Regional Manager of OP-2; (c) Shri Ramamurthy, the then Regional Manager of OP-3; and (d) Shri B. Krishnamurthy, the then Deputy General Manager of OP-4. In fact, the minutes of the meeting were signed by aforementioned company officials where a decision was taken ***‘to share the business among the four PSUs with United India as Leader with 70% and other Companies with 10% each.....United India will be L1 and other three PSUs will be L-2 to L-4 in the quotation being submitted on 8th December, 2009’***.

33. It may be noted that each of the OPs has admitted to and confirmed the authenticity of the said minutes of the ICCC meeting. In this regard, reference may be had to:

(a) OP-1’s letter dated 07.11.2013 where it has stated that *“Yes, Minutes of ICCC meeting are authentic”* and *‘Mr. Rajasekharan was the Chief Regional Manager of Kochi RO as on 07.12.2009 and had signed the same.’*

(b) OP-2’s letter dated 20.11.2013 where it has stated that *‘the minutes appear to be authentic’* and *‘Mr. Girish Raj was the CRM of New India Assurance Co., Ernakulam RO as on 07.12.2009 and his signatures appear to be authentic’*;

(c) OP-3’s letter dated 21.11.2013 where it has stated that *“Yes, Minutes of ICCC Meeting are authentic”* and *‘Yes, we confirm Mr. Ramamurthy was the Regional Manager as on 07.12.2009 and we certify his signatures on the minutes.’*; and

(d) OP-4’s letter dated 18.11.2013 where it has stated that *‘The Minutes of Meeting is found authentic on inquiry, however it was not placed before any Committee of General Managers of PSU companies as*



सत्यमेव जयते



*stated in the minutes’ and ‘Yes. Mr. B. Krishnamurthy was the Deputy General Manager of United India Insurance Company Limited as on 07.12.2009 and had signed the Minutes.’*

34. The Commission finds that the decision taken by OPs in the abovementioned ICCC meeting was, in fact, implemented by them. In this regard, the Commission notes the financial bids submitted by the participating bidders in response to the 2009 tender. A comparison of the financial bids submitted by the OPs is set out below:

Details of Price Bids relating to the Tender dated 08.12.2009

S. No.	Participating Insurance Companies	Whether Technically Qualified	Marks awarded in Technical Evaluation	Bid Amount (Rs.)	
				Without S. T.	With S. T. @ 10.3%
1.	United India Insurance Co. Ltd. (OP-4)	Yes	66.00	421	464
2.	The Oriental Insurance Co. Ltd. (OP-3)	Yes	53.00	497	548
3.	ICICI Lombard General Insurance Co. Ltd.	No	47.50	409	451
4.	Cholamandalam MS General Insurance Co. Ltd.	No	35.50	499	555.40
5.	The New India Assurance Co. Ltd. (OP-2)	No	39.50	480	529
6.	National Insurance Co. Ltd. (OP-1)	No	37.50	490	540
7.	Star Health and Allied Insurance Co. Ltd.	No	40.50	675	745

35. It is clear from the above, OPs quoted price bids in accordance with the decision taken in the ICCC meeting held on 07.12.2009. The



Commission notes that in line with the decision taken in the ICCC meeting, OP-4 was the L-1 bidder.

36. Further, the Commission notes that it is an admitted fact that OP-4 entered into a business sharing arrangement with other OPs in relation to the 2009 RSBY tender in the manner set out below:

Details of Business Sharing Arrangement relating to the Tender dated 08.12.2009

<b>Total Business Generated for OP-4 - Rs. 78,93,64,054</b>			
<b>S. No.</b>	<b>Name of the Public Sector Insurance Company</b>	<b>Business Sharing (in terms of %)</b>	<b>Business Sharing (in terms of revenues)</b>
1.	National Insurance Co. Ltd. (OP-1)	10	7,89,36,405
2.	The New India Assurance Co. Ltd. (OP-2)	10	7,89,36,405
3.	The Oriental Insurance Co. Ltd. (OP-3)	15	11,84,04,609
4.	United India Insurance Co. Ltd. (OP-4)	65	51,30,86,635

37. The Commission notes that it is abundantly clear that the decision taken in the ICCC meeting held on 07.12.2009 relating to the business sharing arrangement was actually implemented by OPs and as such the submission made by the OPs that the decision taken during the ICCC meeting was not implemented is factually patently false and incorrect.
38. In view of the above, the Commission concludes that OPs colluded and rigged bids in response to the tender issued by the Government of Kerala. In coming to this conclusion, the Commission relies on (a) minutes of the meeting held by OPs on 07.12.2009 at Kochi (b) the financial bids submitted by OPs prior to finalization of the tender; and (c) the business sharing arrangement concluded subsequently after finalization of the tender. The Commission notes that the evidence clearly and unequivocally establishes that not only did the OPs meet one day prior to the submission of bids, they also entered into an anti-competitive agreement to manipulate the tendering process initiated by the Government of Kerala for the implementation of RSBY and CHIS schemes.



39. It may also be pointed out that despite their previous admissions, at the time of depositions before the DG when the said minutes of the ICCC meeting were put to the company officials representing OPs, they provided roundabout and evasive responses. OPs' officials either stated that they were not in a position to confirm the same as it was a photocopy or they could not remember anything as the matter was nearly 5 years old. The Commission notes that this conduct clearly highlights that when faced with glaring evidence, OPs sought to mislead the investigation.
40. Further, the Commission notes that during subsistence of the existing contract, OP-4 sought an upward revision of the premium price bids for the subsequent year, *i.e.*, 2011-12 on account of financial losses incurred by it during implementation of RSBY and CHIS schemes. The Government did not agree to this demand as there was no legal provision to allow increase in premium rates. Consequently, OP-4 invoked the exit clause of the contract executed by it with the Government of Kerala for implementation of RSBY and CHIS schemes. This led to the re-tendering in the year 2011-12.
41. On 21.10.2010, CHIAK initiated re-tendering for selection of the insurer for the implementation of RSBY/ CHIS contracts for a period of three years commencing from 01.04.2011. The closing date of the re-tender was 06.12.2010. The TEC evaluated the bids submitted by the seven bidders and found OP-2 and OP-4 to be technically qualified. Further, OP-4's price bid was found to be L1. Accordingly, the tender for the year 2011-12 was awarded to OP-4 for a period of three years with yearly basis renewals.
42. Admittedly, OP-4 entered into a business sharing arrangement with OP-1 and OP-2 in a manner such that each of them shared 10% of the total businesses of OP-4.



43. The Commission notes that while the contract finalized for the 2011-12 was still in operation, once again OP-4 resorted to its earlier *modus operandi* and took an internal decision to seek an upward revision of insurance premiums. In this regard, reliance may be placed on an office note dated 01.12.2011 where it was stated that:

*“6. In view of the above facts the option before the company is to inform CHIAK that unless increased premium is paid for the coming year on the basis of claims experiences, we will be constrained to exit the scheme exercising the cancellation provision under clause 18 of the Interim Agreement (final agreement not signed yet).*

44. Pursuant to internal deliberations (detailed above), OP-4 wrote a letter dated 09.12.2011 to CHIAK giving them a notice for termination of the contract with effect from 01.04.2012. As a result, CHIAK was left with no other option but to initiate the re-tendering process for the year 2012-13 for finalization of the insurer for a period of three years commencing from 01.04.2012.

45. On 20.12.2011, CHIAK issued the tender with 30.12.2011 as the closing date. Six bidders submitted their bids which were scrutinized by TEC. Of all the participating bidders, the TEC found OP-4 and ICICI Lombard General Insurance Company Ltd. to be technically qualified. On the basis of financial bids, OP-4 was once again found to be the L1 bidder. The contract for 2012-13 was finalized with OP-4 as the insurer for RSBY and CHIS schemes.

46. Admittedly, OP-4 again entered into a business sharing arrangement with OP-1 and OP-2 in a manner such that each of them shared 10% of the total businesses of OP-4.

47. The Commission notes that it is clear from the above that OP-4 invoked



सत्यमेव जयते



the exit clauses of the contracts executed with the Government of Kerala under the tenders of 2011-12 and 2012-13 on the pretext that the insurance premium under the existing contract was unviable. The Commission would now proceed to review the premium rates bids quoted by OPs in response to the said tenders.

Details of OPs' rates bids in relation to the tenders of 2011-12 and 2012-13

S. No.	Name of the Public Sector Insurance Company	Price Bids for 2010-11	Price Bids for 2011-12	Price Bids for 2012-13
1.	National Insurance Co. Ltd. (OP-1)	Rs. 490 + S.T. Rs. 540 (with S.T.)	Rs. 750 + S.T. Rs. 827.25 (with S.T.)	Rs. 1600 + S.T.
2.	The New India Assurance Co. Ltd. (OP-2)	Rs. 480 + S.T. Rs. 529 (with S.T.)	Rs. 750 + S.T. Rs. 827 (with S.T.)	Rs. 1150 + S.T. Rs. 1292 (with S.T.)
3.	The Oriental Insurance Co. Ltd. (OP-3)	Rs. 497 + S.T. Rs. 548 (with S.T.)	Rs. 810 + S.T. Rs. 893.43 (with S.T.)	Rs. 1400 + S.T.
4.	United India Insurance Co. Ltd. (OP-4)	Rs. 421 + S.T. Rs. 464 (with S.T.)	Rs. 748 + S.T. Rs. 825 (with S.T.)	Rs. 1274

48. It is abundantly clear from the above that the premium rates quoted by OPs in response to the tenders issued by the Government of Kerala in 2011-12 and 2012-13 are significantly higher than the premium rates bids quoted in response to the immediately preceding tender. OPs have failed to provide any plausible justification to explain the significant rises in premium rates.

49. In view of the above, the Commission notes that the OPs' conduct relating to the tenders issued by the Government of Kerala in the years 2011-12 and 2012-13 demonstrate a clear bidding pattern. In relation to both the tenders: (a) OPs have quoted substantially higher premium bids; (b) OP-4 repeatedly secured the L1 position and became the insurer



सत्यमेव जयते



under the RSBY and CHIS schemes; (b) admittedly, OP-4 entered into business sharing arrangements with OP-1 and OP-2; (c) while the contracts were awarded for a period of three years, OP-4 repeatedly invoked the exit clause of the concluded contracts, thereby, forcing the Government of Kerala to initiate re-tendering after completion of the first year of the contract.

50. The Commission would now proceed to examine if the bidding pattern relating to the tenders of 2011-12 and 2012-13 (detailed above) is an outcome of any anti-competitive agreement.
51. In this regard, reference may be made to two internal documents, namely, OP-4's internal office note dated 01.12.2011 and OP-3's internal office note dated 28.12.2011.
52. The Commission is of the opinion that OP-4's office note dated 01.12.2011 clearly demonstrates that the public sector insurance companies, *i.e.*, OPs were cartelizing to fix higher insurance premium rates. Relevant extract from the aforementioned office note is set out below:

*7. If we exit the scheme CHIAK may go for re-tendering. We may again participate in the process quoting appropriate higher premium jointly with other PSUs.*

53. From OP-3's office noted dated 28.12.2011, the Commission notes that collective action of the public sector insurance companies is clearly and unequivocally established. For ready reference, the relevant excerpts therefrom are quoted below:

*'After the fresh tender was published, UIICL called for a meeting of all the four PSUs and discussed the reason for the past lossmaking. We participated in the meeting without any commitment to share the premium.'*



सत्यमेव जयते



54. In view of the above, the Commission holds that it is clearly borne out from the case records that the OPs were holding meetings prior to submission of bids in response to the tenders issued by the Government of Kerala for the implementation of RSBY and CHIS schemes. This, when viewed together with the past practice in relation to the RSBY/ CHIS tender dated 08.12.2009 and the bidding pattern exhibited by OPs in relation to the subsequent tenders, singularly point to the only conclusion that the bidders were acting pursuant to an anti-competitive agreement to manipulate the tendering process initiated by the Government of Kerala.
55. The Commission would now examine genuineness of the ostensible explanations put forth by OPs, including, losses incurred by them as the quantum of claims disbursed outnumbered the quantum of premiums received and the flawed incentive scheme (for hospital staff) implemented by the Government of Kerala. In this regard, a reference may be had to the statement made by the representatives of Reliance General Insurance Company Limited, the insurer under the RSBY/ CHIS tender of 2013-14. The Commission notes that this tender was awarded to Reliance General Insurance Company Limited at an annual premium of Rs. 738/- per family for a period of three years and this contract was renewed for the year 2014-15 at the same price. The Commission also notes that representatives of Reliance General Insurance Company Limited have confirmed that the company is not incurring any losses for providing health insurance services under the RSBY/ CHIS schemes. On this basis, the Commission holds that the explanations offered by OPs are false assertions.
56. Thus, the agreement amongst OPs to manipulate the tendering process initiated by the Government of Kerala/ CHIAK for implementation of RSBY and CHIS for the years 2010-11, 2011- 12, 2012-13 in accordance with the provisions of section 2(b) of the Act is clearly and



unequivocally established.

57. Further, in terms of the provisions contained in section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.
58. By virtue of the presumption contained in subsection (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-(a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.
59. It may also be pointed out that explanation appended to section 3(3) of the Act defines “bid rigging” as any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.



सत्यमेव जयते



60. In the present case, as noted above, existence of an agreement amongst OPs is beyond any shadow of doubt in view of the minutes of the ICCC meeting held on 07.12.2009 by PSUs where discussions relating to business sharing arrangement and submission of quotations (in response to the RSBY/ CHIS tender dated 08.12.2009 of the Government of Kerala) took place. Not only this, the aforementioned decision was actually carried out as can be seen from the bid documents submitted by OPs. Further, the internal notes, detailed above, do not leave an iota of doubt that the bids were decided mutually and not through a competitive manner. The entire *modus operandi* resorted to by OP-4 in concert with the other PSUs to exit from the tender year after year forcing re-tendering and consequent quotation of higher quotation of premium in collusion is a virtual fraud perpetrated upon the State of Kerala with regard to a social welfare scheme which was directed at BPL families.

### **Conclusion**

61. In view of the above, the Commission is of the considered opinion that the aforementioned conducts of OPs have resulted in manipulation of the bidding process initiated by the Government of Kerala in contravention of the provisions of section 3(1) read with section 3(3)(d) of the Act. In case of agreements as listed in section 3(3) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the opposite parties. In the present case, the opposite parties could not rebut the said presumption. It has not been shown by the opposite parties how the impugned conduct resulted into accrual of benefits to consumers or made improvements in production or distribution of goods in question. Neither, the opposite parties could explain as to how the said conduct did not foreclose competition.



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## ORDER

62. Resultantly, the Commission directs OPs to cease and desist from indulging in the practices which have been found to be anti-competitive in the preceding paragraphs under the provisions of section 3(1) read with section 3(3)(d) of the Act.
63. The Commission, for the reasons recorded below, finds the present case fit for imposition of penalty. Under the provisions contained in section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse. Further, in cases of cartelization, the Commission may impose upon each such cartel participant, a penalty of upto three times of its profit for each year of continuance of the anti-competitive agreement or ten per cent of its turnover for each year of continuance of such agreement, whichever is higher.
64. It is evident that the legislature has conferred wide discretion upon the Commission in the matter of imposition of penalty. It may be noted that the twin objectives behind imposition of penalties are: (a) to impose penalties on infringing undertakings which reflect the seriousness of the infringement; and (b) to ensure that the threat of penalties will deter the infringing undertakings. Therefore, the quantum of penalties imposed must correspond with the gravity of the offence and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case.
65. The Commission would now bestow a thoughtful consideration to the aggravating and the mitigating circumstances that may be available to OPs. The present case relates to bid rigging in public procurement for social welfare schemes the beneficiaries of which are BPL families. The



सत्यमेव जयते



Commission holds the collective, anti-competitive conducts of OPs affecting the State of Kerala and the beneficiaries of RSBY and CHIS schemes, *i.e.*, BPL and other poor families to be aggravating circumstances. The Commission also considers the peculiarities of the insurance sector which include importance of insurer's solvency for the consumers as mitigating circumstance. After duly considering the aggravating and mitigating circumstances, the Commission finds it appropriate to impose a penalty on OPs at the rate of 2% of their average turnover of the last three financial years based on the financial statements filed by them. Details of the quantum of penalties imposed on OPs are set out below:

S. No.	Name of OPs	Turnover for 2010-11 (in Crores)	Turnover for 2011-12 (in Crores)	Turnover for 2012-13 (in Crores)	Average Turnover for Three Years (in Crores)	@ 2% of average turnover (in Crores)
1.	National Insurance Co. Ltd.	6622.96	8195.54	9602.98	8140.49	162.80
2.	New India Assurance Co. Ltd.	10574.02	12409.63	14677.17	12553.60	251.07
3.	Oriental Insurance Co. Ltd.	4611.57	5236.65	5236.65	5028.29	100.56
4.	United India Insurance Co. Ltd.	6525.21	7854.38	9114.16	7831.25	156.62

66. Accordingly, the Commission imposes a sum of Rs. 162.80 crore on OP-1, Rs. 251.07 crore on OP-2, Rs. 100.56 crore on OP-3 and Rs. 156.62 crore on OP-4 as penalties for the impugned conduct in contravention of the provisions of section 3(1) read with section 3(3)(d) of the Act.



67. The Commission further directs OPs to deposit the penalty amount within 60 days of receipt of this order.

68. It is ordered accordingly.

**(S. L. Bunker)**  
**Member**

**(Sudhir Mital)**  
**Member**

**(Augustine Peter)**  
**Member**

**(U. C. Nahta)**  
**Member**

New Delhi  
Date: 10/07/2015