Chinese Antitrust Agency Imposes Fines for Coinsurance [1]

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In December 2015, Chinese Antirust Agency, the Hubei Administration for Industry and Commerce ("Hubei AIC"), disclosed its punishment on 12 insurance companies for signing illegal coinsurance agreements. In this case, Chinese antitrust agency considered a coinsurance for Construction Project Personal Accident Insurance illegal. 12 insurance companies were fined CNY 4.69 million in total. It is not the first time that insurance companies and coinsurance targeted by China's antitrust agencies.

Major Contents of the Coinsurance Agreement

The disclosed punishment decision suggests that the Hubei branch of China Pacific Life Insurance ("the Company"), 11 other insurance companies and Wuhan Construction Safety Technology Consultation Center ("WCSTCC") signed a Coinsurance Agreement on Construction Project Personal Accident Insurance ("Coinsurance Agreement") of which the main contents include:

1) The Company and 11 other involved companies, as the coinsurers, jointly take charge of the personal accident insurance concerned with the construction project directly administered by the Wuhan government. WCSTCC is responsible for providing safety, professionalism and technology services regarding the relevant personal accident insurance.

2) The Company, as the chief insurer of the coinsurance, occupies 12% of the total amount of the insurance, and the other 11 companies respectively occupy 8%.

3) The Company, as the representative of the coinsurance, is in charge of collecting the premium, signing the standard form insurance policies and issuing the invoice in its own name. The Company should share the charged premium with the other companies in accordance with the Coinsurance Agreement.

4) Both the Company and the other insurance companies should pay 25% of the actually received premium to WCSTCC as the service fee. WCSTCC will assist the coinsurers in providing safety and technology management service to the insured. In addition, the 11 insurance companies should pay 5% of their premium to the Company as the management fee.

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[1] The original Chinese notice published by the SAIC is available at http://www.saic.gov.cn/zwgk/gggs/jzzf/201512/t20151229_165445.html.

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5) In case an accident happens, the 12 companies will jointly bear the damages based on their respective shares in the coinsurance.

6) There is a contact mechanism established in the coinsurance. The coinsurers will regularly hold coinsurance conferences to discuss existing problems.

Furthermore, the coinsurers and WCSTCC also signed a self-discipline agreement and established a complete management system to assure the implementation of the Coinsurance Agreement. Any party violating the Coinsurance Agreement would be punished.

Hubei AIC's Analysis on the Coinsurance

Hubei AIC found that WCSTCC was solely invested by Wuhan Construction Safety Management Association, which was under Wuhan Construction Commission. The centre helped implement certain functions of the Wuhan Urban Construction Safety Management Station and was responsible for quality supervision and safety supervision of municipal construction projects.

It later became a prerequisite for construction companies to purchase insurance from any member of the coinsurance in order to get approval to commence their project. According to the decision, Hubei AIC launched another separate investigation against WCSTCC.

Through the investigation, Hubei AIC concluded that the Coinsurance Agreement constituted a monopolistic agreement as prohibited by article 13[3] of the Chinese Anti-monopoly Law ("AML") with the following analysis:

First, coinsurance as a common business model to jointly share and lower risks is widely adopted in the insurance industry. A coinsurance arrangement for a specific project in order to avoid high risks faced by one insurer could be legal. However, coinsurance should not target the entire market. In this case, prior to the Coinsurance Agreement, the risks of the construction projects were unpredictable since the scale of the construction projects, the difficulty of the construction, and the amount of construction workers could not be available. It is impossible to predict the risks of the

[3] Article 13 Competing undertakings are prohibited from concluding the following monopoly agreements：

1) on fixing or changing commodity prices；
2) on restricting the amount of commodities manufactured or marketed；
3) on splitting the sales market or the purchasing market for raw and semi-finished materials；
4) on restricting the purchase of new technologies or equipment, or the development of new technologies or products；
5) on joint boycotting of transactions；and
6) other monopoly agreements confirmed as such by the authority for enforcement of the Anti-monopoly Law under the State Council.

For the purposes of this Law, monopoly agreements include agreements, decisions and other concerted conducts designed to eliminate or restrict competition.

projects, thus it is not necessary to cooperate with other insurers to collectively bear the risks. The purpose of the 12 insurance companies to establish the coinsurance is to avoid the competition, which demonstrates the Coinsurance Agreement, belongs to a monopolistic agreement as prohibited by the AML.

Second, the companies through entering into the coinsurance agreement actually divided the relevant market of construction project personal accident insurance in Wuhan city, which affected the competition in the relevant market and damaged the interests of other competitors and the consumers. In particular, the Chinese Construction Law as amended in 2011 stipulates that the purchase of personal accident insurance is not mandatory and the construction companies have the right to choose whether to buy the said insurance or not. As mentioned, purchasing insurance from the coinsurance had been the prerequisite for construction companies to obtain administration approval for the project, which seriously distorts the fair competition in the market.

Fines Imposed on the Coinsurers

Citing article 46[4] of the AML, the 12 insurance companies were collectively fined CNY 4.69 million, including fines on the companies and confiscation of illegal gains. It is noteworthy that the fines were calculated based on the companies' 2014 annual sales of the insurance product in connection with the coinsurance. The Company as the chief insurer was fined amounting to 6% of its 2014 annual sales of the relevant insurance product in the coinsurance, and other companies were fined amounting to 2% of relevant sales. For more specific information, please see the following table:

Company Name (Hubei Branch)	Fines (CNY million)	Percentage of the sales	Illegal Gains (CNY million)
China Pacific Life Insurance	0.0653	6%	0.941
Sino Life	0.0145	2%	0.4332
Alltrust Insurance	0.0145	2%	0.4332

[4] Article 46 In the case where an Operator violates the provisions of this Law by entering into and implementing a monopoly agreement, the anti-monopoly law enforcement authorities shall order a halt to illegal activities, confiscate illegal earnings, and impose a fine of between of between 1 and 10 percent of the previous year's sales volume; if the monopoly agreement had been entered into but not yet been implemented, an fine no more than CNY500,000 shall be imposed.

Where an Operator reports, on its own initiative, a monopoly agreement entered into by said Operator to the anti-monopoly law enforcement authorities as well as providing key evidence, the anti-monopoly law enforcement authorities may consider a lighter fine, or forgo a fine altogether.

In the case where an industry association violates the provisions of this Law by making arrangements for the Operators within its industry to enter into monopoly agreements, the anti-monopoly law enforcement authorities my impose a fine of no more than CNY500,000; if the case is serious, the administrative authorities in charge of the registration of non-governmental organizations may revoke the registration of said industry association.

Taikang Life Insurance	0.0145	2%	0.4332
China Continent Insurance	0.0145	2%	0.4332
China Pacific Property Insurance	0.0145	2%	0.4332
China Life Insurance	0.0145	2%	0.4332
PICC Property and Casualty	0.0145	2%	0.2599
Taiping General Insurance	0.0145	2%	0.13
Union Life Insurance	0.0145	2%	0.1177
Ping An Annuity Insurance Company of China	0.0145	2%	0.4201
Ping An Property & Casualty Insurance Company of China	0.0145	2%	-
Subtotal	0.2248	-	4.4679
Total	4.6927		

Analysis and Conclusion

Coinsurance, as an effective approach to lower risks of insurers, is widely used in the insurance industry. Information sharing and agreements on coinsurance were generally considered efficient and legitimate. However, from an antitrust perspective, coinsurance may raise competition concerns, depending on the circumstances of each agreement. In the case that there is enough capacity for one insurer to cover the potential risks, the coinsurance might be considered as entering into a horizontal monopolistic agreement.