The GSIS Takeover of the Compulsory Third Party Liability Insurance Industry: Restraint of Trade or Police Power?

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I. Introduction

On July 2006, Government Service Insurance System (GSIS) President and General Manager Winston Garcia presented an integrated vehicle registration proposal before the House Committee of Transportation. Under the proposed scheme, the issuance of compulsory third party liability (CTPL) insurance policies would be centralized under the GSIS in order to effectuate a "faster, more efficient, and easier" procedure of vehicle registration.[1]

Garcia mentioned that the policy behind such a move would be to "curb the proliferation of 'fly by night' insurance companies and fake CTPL insurance policies issued to private vehicle owners," and "to find a solution

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1. House of Representatives Committee News, GSIS Presents Proposal on Third Party Liability Insurance for Private Vehicles, July 14, 2006, *available at* http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=656 (last accessed Dec. 18, 2008).

to the lingering problems in the insurance industry brought about by the current system of authenticating certificates of cover (COCs) for CTPL coverage."[2] Rep. Monico Puentevella at the same time filed House Resolution No. 1073, calling for an inquiry into the proposals made by the Insurance Commission (IC) and the GSIS regarding such CTPL policies.

The sudden interest into the CTPL insurance business was prompted by the proliferation of fake insurance policies that were causing the government losses of up to Php268 million in unpaid taxes on CTPL premiums. Furthermore, such bogus CTPL policies were forcing motor vehicle owners to indemnify vehicular mishap victims out of their own pockets, contrary to their expectations as contracting parties.

The curious phenomenon of CTPL insurance is well-known to motor vehicle owners who have dared to undertake the laborious task of motor vehicle registration with the Land Transportation Office (LTO) and its branches. The business of issuing CTPL policies in and around registration areas is of public knowledge: for around Php300.00, one can be issued an insurance policy covering third person liability in the name of some obscure insurance company and for a specified amount indicated therein. The amount paid is also inclusive of all future payments on the premium, since, by the very nature of the transaction, the consideration is not really to provide a comprehensive and demandable coverage on any future contingencies on the automobile, but for pure and simple convenience — even if established insurance companies also offer CTPL insurance for purposes of vehicle registration, the ease and expedience of procuring an insurance policy on-site is unmatched. Needless to say, this scheme, requiring merely a modicum of physical labor and overhead expenses, is largely profitable.

A. The Legal Requirement

The policy thereafter issued is usually enough to comply with the bare requirements of the Insurance Code on CTPL insurance.[3] As such,

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2. *Id.*

3. Ordaining and Instituting an Insurance Code of the Philippines [INSURANCE CODE], Presidential Decree No. 612 (as amended) (Dec. 18, 1974), Sec. 374. The section provides:

> It shall be unlawful for any land transportation operator or owner of a motor vehicle to operate the same in the public highways unless there is in force in relation thereto a policy of insurance or guaranty in cash or surety bond issued in accordance with the provisions of this chapter to indemnify the death, bodily injury, and/or damage to property of a

> [T]he law prohibits any motor vehicle owner or operator from operating his vehicle on public highways unless there is in force in relation thereto a policy insurance or guaranty in cash or surety bond to indemnify the death or bodily injury of the third party or the passenger, as the case maybe, arising from the use thereof ….[4]

The LTO will thus refuse to register or renew the registration of a motor vehicle unless there is an existing insurance policy in force.[5]

This prerequisite therefore assures victims of motor vehicle accidents, as well as the dependents thereof, of immediate and mandatory financial assistance or indemnity regardless of the financial capability of the motor vehicle owner or operator responsible for the accident. In such a case, the insurer's liability is "primary and accrues immediately upon the occurrence of the injury or event upon which the liability depends, and does not depend on the recovery of judgment by the injured party against the insured."[6]

The LTO policy of denying registration or renewal of a motor vehicle registration without a CTPL insurance coverage thus finds its roots in public policy considerations: the law deems it in the best interest of the motoring public to be compensated for mishaps without the artificial delay caused by litigation. Otherwise, automobile owners, operators, and passengers in general will be deterred from motoring by the high incremental cost of recouping from unexpected losses.

B. The Case

The conflict stemmed from the issuance of the Department of Transportation and Communication (DOTC) Order No. 2007-28 which called for the integration of the issuance of the CTPL insurance policy with

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> third-party or passenger, as the case may be, arising from the use thereof. *Id.*

4. HECTOR S. DE LEON, THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED 685 (2006).

5. INSURANCE CODE, Sec. 376.

   The section provides:

   > The Land Transportation Commission shall not allow the registration or renewal of registration of any motor vehicle without first requiring from the land transportation operator or motor vehicle owner concerned the presentation and filing of a substantiating documentation in a form approved by the Commissioner evidencing that the policy of insurance or guaranty in cash or surety bond required by this chapter is in effect. *Id.*

6. DE LEON, *supra* note 4 (citing Shafer v. Judge, RTC of Olongapo City, Br. 75, 167 SCRA 386 (1988); First Integrated Bonding & Insurance Co., Inc. vs. Hernando, 199 SCRA 796 (1991)).

the LTO. Obviously influenced by the July 2006 proposal by GSIS General Manager Garcia, the purpose and effect of the issuance elicited strong reactions from private insurance industry, especially from the Philippine Insurers and Reinsurers Association (PIRA) which immediately filed a petition for certiorari and prohibition with preliminary injunction.

Impleading the DOTC and DOTC Secretary Leandro Mendoza, the LTO, and the IC, PIRA alleged that the DOTC Order was unconstitutional, arbitrary, oppressive and confiscatory to the point of being in restraint of trade.[7] Furthermore, PIRA argued that if the said Department Order is to be implemented in its entirety and GSIS becomes the sole provider of CTPL policies, established insurers will be forced out of business and an estimated 60,000 agents would be left unemployed.[8]

On the other end, GSIS insisted that the Department Order merely "outlined the rules on the integration of the issuance and payment of Compulsory Third-Party Liability (CTPL) in the Land Transportation Office database. It did not award 'CTPL issuance' to the Government Service Insurance System (GSIS)."[9] Similarly, it insisted that

> [t]he DO addresses the problems surrounding the CTPL business. It is estimated that tax leakages from unreported CTPL insurance policies in 2003 amounted to around P268 million. The other concerns relate to overpricing of CTPL policies, issuance of fake policies and unpaid claims.
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> We think that the true issue should be public safety and convenience. The public should not be denied a program that is clearly beneficial to it.[10]

C. The Resolutions

The Court of Appeals (CA) 5th Division, in its 28 July 2008 Resolution, granted PIRA's application for a 60-day Temporary Restraining Order to

7. Honesto General, Questions of Policies, *Insurers vs DoTC*, INQUIRER.NET, Aug. 1, 2007, *available at* http://business.inquirer.net/money/columns/view_article.php?article_id=79875 (last accessed Dec. 18, 2008).

8. Philippine Insurers and Reinsurers Association, Inc. et al, An Appeal to President Gloria Macapagal Arroyo, *available at* http://www.pirainc.com.ph/an_appeal_to_pgma.htm (last accessed Dec. 18, 2008).

9. Josefina L. Valera, Letters to the Editor, *Real Issue on CTPL*, INQUIRER.NET, July 24, 2007 *available at* http://opinion.inquirer.net/inquireropinion/letterstotheeditor/view_article.php?article_id=78363 (last accessed Dec. 18, 2008).

10. *Id.*

preserve the rights of the parties during the pendency of the main action concerning the constitutionality of the controversial Department Order.

Subsequently, in a Resolution dated 24 October 2008, the Special Seventeenth Division of the CA, deciding primarily to act upon the question of whether the provisional remedy of preliminary injunction should be granted, resolved to issue the same, finding that such an action was timely.

In concluding that the applicant was entitled to the relief prayed for and that the right sought to be protected was one *in esse*, the CA said that the automatic issuance of the CTPL policies by the LTO pursuant to the directive of the questioned Department Order during the registration or renewal of registration at the LTO offices would "eliminate a work step for the transacting public who would no longer have to purchase their CTPL insurance policies individually."[11] Given that such a process of acquiring CTPL policies basically did away with the need for insurance agents as middlemen, the court opined that in a "virtual monopolistic take-over of the CTPL insurance business … [w]hat the petitioners' members would stand to lose is material and substantial — the source of livelihood for themselves and their families."[12] Thus, the court ruled that the immediate implementation of the Department Order pursuant to subsequent Notices given by the DOTC "have given rise to the urgency and paramount necessity for the injunctive writ to prevent serious damage to the petitioner's members. Truly, injunction becomes for them a preservative remedy aimed at no other purpose than to protect their substantive rights and interests during the pendency of the principal action."[13]

Noticeable however in the court's ruling was its refusal to touch upon the substantive legal matter of the controversy: whether to nullify the Department Order as an oppressive use of police power and as being in restraint of trade. The court made it very clear, in order to allay the fears of the respondent GSIS, that "there is not to be any prejudgment of the main case without trial. The writ of preliminary injunction is to be issued only to prevent the threatened continuous and irremediable injury to the petitioners and their members before their claims are to be justly and thoroughly studied and adjudicated."[14]

As such, the main issue remains unresolved and will therefore be the subject of scrutiny in this Comment.

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11. Alliance of Non-Life Insurance Workers v. Mendoza, CA-G.R. S.P. No. 104211, Oct. 24, 2008, at 6-7.

12. *Id.* at 7.

13. *Id.* at 8 (citing Idolor v. Court of Appeals, 351 SCRA 399 (2001); Cagayan de Oro City Landless Residents Association, Inc., v. Court of Appeals, 254 SCRA 220 (1996); Los Baños Rural Bank, Inc. v. Africa, 433 Phil. 930, 940-41 (2002)).

14. *Id.* at 10.

II. POLICE POWER OR RESTRAINT OF TRADE?

A. Police Power: An Examination

The definition of police power in our legal system is well-established as "the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances" for the general good of the community.[15] As such, the exercise of police power "rests upon public necessity and upon the right of the state and the public to self-protection."[16] Given this wide scope for discretionary use of such an inherent power, the state may therefore utilize police power by any means to better its citizens' lives, subject to the important considerations of due process and equal protection, as enforced by the courts in their exercise of judicial review.[17]

The insurance industry is one indeed imbued with public interest. So much more are the considerations surrounding the philosophy behind the CTPL coverage requirement which, as abovementioned, seeks to provide an immediate remedy to victims of vehicular mishaps. The evil sought to be avoided is the non-payment of indemnity from CTPL policies issued by fly-by-night insurance firms doing business in stockrooms or warehouses beside LTO offices, cashing-in on the convenience allowed by the issuance of a decidedly pro forma certificate of cover for the consideration of only a one-time premium payment.

For all the merits of a centralized and regulated CTPL however, such a scheme does not consider the holders of legitimate certificates of cover from reputable insurance companies. Granted that an exercise of police power has been used to justify "public safety" measures,[18] but there is no jurisprudence regarding governmental action directed towards a large-scale industry built upon contractual compensation for the happening of an uncertain risk. It can nevertheless be argued that this is in step with what has been an ongoing trend away from a laissez faire philosophy, even to the point of conflict with "both the freedom of contract and the sacredness of contractual

15. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 102 (2003 ed.) (citing Commonwealth v. Alger, 7 Cush. 53 (Mass. 1851)).

16. *Id.* (citing United States v. Toribio, 15 Phil. 85, 97 (1910); Iloilo Cold Storage Co. v. Municipal Council, 24 Phil. 471, 485 (1913); Chuoco Tiaco v. Forbes, 40 Phil. 1122, 1126 (1913); Cuunjieng v. Patstone, 42 Phil. 818 (1922)).

17. *See* Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 20 SCRA 849, 860 (1967).

18. BERNAS, *supra* note 15, at 103.

obligations."[19] This trend towards reasonable governmental regulation of the free market and its principles is perceptible in the qualification of what are considered to be acceptable monopolies.

B. Acceptable Monopolies

The 1987 Constitution, in defining monopolies and combinations in restraint of trade,[20] makes an important distinction: restraint of trade and unfair competition are prohibited, while monopolies in general are not necessarily prohibited but may be allowed by the state as justified by public interest. The differences are more real than imagined.

First of all, "restraint of trade" in itself is qualified further in American common law where it first appeared as proscribed by the Sherman Act.[21] At first glance, the definition may seem self-evident: "those acts or contracts or agreements or combinations which prejudice public interest by unduly restricting competition … or … injuriously restrain trade either because of their inherent nature or effect or because of their evident purpose."[22] However, this definition is tempered by the use of the "rule of reason" in common law such that an inquiry into "the facts peculiar to the particular business: its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable; … the reason for adopting the particular restraint; and the purpose or end sought to be attained"[23] becomes necessary if only to examine the entirety of the system. In this manner, "a contract, combination, or conspiracy [is illegal only] if *unreasonable restraint* was either its object or effect."[24]

In Philippine jurisdiction, the wording of the provision on monopolies in the Constitution has led an eminent constitutionalist to comment that it is a restatement to the effect that monopolies are not necessarily prohibited by the Constitution but the prohibition and regulation thereof are still reliant on the timeless consideration of public interest.[25] In reality, even before

19. BERNAS, *supra* note 15, at 105.

20. PHIL CONST. art. XII, § 19.

The provision reads:

> The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

21. The Sherman Antitrust Act, 15 U.S.C. §§ 1 – 7 (1890).

22. 54 AM. JUR. 2D § 31 (citing United States v. American Tobacco Co., 221 U.S. 106 (1911)).

23. 54 AM. JUR. 2D § 31.

24. *Id.* (emphasis supplied).

25. *See* BERNAS, *supra* note 15, at 1187-88.

1987, the Supreme Court has allowed the takeover of private industry by state entities despite the allegation of the existence of a state-sponsored monopoly in restraint of trade.

In *Philippine Ports Authority v. Mendoza,*[26] the subject of the controversy was the integration of *arrastre* and stevedoring services in the port of Cebu under the direction of the Philippine Ports Authority (PPA). Pursuant to its powers, the PPA found that the efficiency of port services in Cebu had gone down due to the proliferation of *arrastre* operators and thus issued a policy to grant only one permit to one group as sole operator of *arrastre* and stevedoring services in that port. Naturally, the operators who were about to be displaced raised the constitutionality of such a monopoly in services. The Court brushed aside the argument, stating, *viz*:

> The use of the word "regulate" in the Constitution indicates that some monopolies, properly regulated, are allowed. Regulate means includes [sic] the power to control, to govern, and to restrain, but regulate should not be construed as synonymous with suppress or prohibit … . There are areas where for special reasons the force of competition, when left wholly free, might operate too destructively to safeguard the public interest.[27]

The Court therefore rationalized that in this case, given the established inefficiency of multiple operators of port services, "[a]ny prolonged disjunction of the services being rendered there will prejudice not only inter-island transport and international trade and commerce. Operations in said port are therefore imbued with public interest and are subject to regulation and control for the public good and welfare."[28] Thus, the Court declared that the "overriding and more significant consideration is public interest,"[29] even without going into the technical necessities of proving whether there was indeed a monopoly.

In the subsequent case of *Pernito Arrastre Services, Inc. v. Mendoza*,[30] the Court upheld its earlier pronouncement, saying that "in industries affected with public interest, a regulated monopoly is not necessarily proscribed, if such is deemed necessary in order to protect and promote public interest."[31]

A point of divergence may however be made between these two cases and the current controversy of the GSIS annexation of the CTPL insurance

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26. Philippine Ports Authority v. Mendoza, 138 SCRA 496 (1985).

27. *Id.* at 509-10.

28. *Id.*

29. *Id.*

30. Pernito Arrastre Services, Inc. v. Mendoza, 146 SCRA 430 (1986).

31. *Id.* at 444.

industry. In the first *arrastre* case, the contract to operate the integrated port services was eventually awarded to a private consortium of 11 *arrastre* contractors who subsequently merged together to gain control over the commodity. This setup would find affirmation in the provisions of the 1973 Constitution which did not prohibit private monopolies provided that the public interest requirement, as the Supreme Court found, was satisfied.[32]

In the GSIS dispute, the implementation of the questioned Department Order would result in the award of an ostensible monopoly to the government itself, since GSIS is a government-owned and controlled corporation. Although the prevailing constitutional provision on monopolies has been expanded to include public monopolies as the subject of either state prohibition or regulation, such has not yet been severely tested in jurisprudence under the current constitution.

In *Tatad v. Secretary of the Department of Energy*,[33] the Court struck down a questioned law on the basis of the existence of a *private* oligopoly[34] between Petron, Caltex, and Shell despite the law's intent to deregulate the oil industry. Would a state-sponsored *public* monopoly escape the same fate given the existence of the public interest requirement?

III. THE VALIDITY OF PUBLIC MONOPOLIES

A. State-Granted Monopolies

The centralization of the issuance of allowable CTPL insurance policies in the GSIS has all the elements of a captured market: since CTPL policies are required by law for the process of motor vehicle registration, the transacting public has now no choice but to purchase the same from GSIS. Given this logical effect of the DOTC Department Order, would it be proper to consider the CTPL insurance industry as monopolized as to its object and effect? Concordantly, should such a monopoly be struck down as unconstitutional? Proceeding from the *Philippine Ports Authority* case, surely such questions ought to be decided on the basis of public interest. However, the additional facet presented by the GSIS case is its character as a public entity that would exercise monopoly or near-monopoly powers at the very least. How would this change the status of the controversy?

In common law, where the concept of restraint of trade and monopolies in general were first formed, most of the prohibitions with regard to state-granted monopolies are those grants which inure to the benefit of private firms. As such, it has been held that constitutional prohibitions against state-

32. *See Philippine Ports Authority*, 138 SCRA at 509-10.

33. Tatad v. Secretary of the Department of Energy, 281 SCRA 330 (1997).

34. *Id.* at 358. Described by the Court in *Tatad* as a market controlled by a handful of players, as opposed to a single player market (monopoly).

granted monopolies are construed as extending only to grants to private as distinguished from public or municipal corporations.[35] The reason for this is that even if the general prohibition on the grant of privileges or immunities to certain citizens or a class of citizens (as opposed to all citizens in equal terms) is sufficient to proscribe the nature and effect of monopolies, the same has always been unsuccessfully invoked because such a specific and exclusive grant has been regarded as a legitimate exercise of police power.[36]

However, even if a "grant of privileges … monopolistic in character, [does] not constitute a monopoly … when reasonably required for the protection of some public interest,"[37] such a grant is on its face proper when it is a business which is inherently dangerous to society, and for that reason, that same business can be regulated on the grounds of public policy and public interest without violating any constitutional prohibition; "no person possesses an inherent right to engage in any employment the pursuit of which is necessarily detrimental to the public."[38]

In monopolies granted by the state for lawful and useful objects of trade, police power is ordinarily used, albeit in a manner more susceptible to restrictions on grounds of reasonableness, equal protection, and caprice. In any case, even if the business to be regulated or monopolized by the state is an ordinary trade or calling, it may still be controlled and regulated by the state when it is of such character as to subject it to state action.[39]

It is therefore clear that state-granted monopolies to private firms are allowed when the object of monopolization is either contraband or illegal, and when it is an ordinary trade or calling whose regulation is essential for the protection of public interest.

B. State Monopolies

A state monopoly (or government monopoly) on the other hand is a form of coercive monopoly in which a government agency is the sole provider of a particular good or service and competition is prohibited by law.[40] In common law, the ordinary constitutional restrictions on the creation of

35. 54 AM. JUR. 2D § 498.

36. *Id.*

37. 54 AM. JUR. 2D § 500 (citing Levin v. Sinai Hospital of Baltimore City, Inc., 186 Md. 174, 46 A.2d 298 (1946)).

38. *Id.*

39. 54 AM. JUR. 2D § 503.

40. Wikipedia, Government Monopoly, *available at* http://en.wikipedia.org/wiki/Government_monopoly (last accessed Dec. 18 2008).

monopolies do not preclude the legislature from creating a monopoly on behalf of the state, as opposed to a private corporation.[41] Much more than the grant to private corporations, the exercise of police power in this case is neither delegated nor diminished in its exercise by a non-sovereign actor: the power is still wielded by the state itself, through its instrumentalities and agencies.

Insurance can be a government monopoly, as in the case of Canadian public automobile insurance. The Insurance Corporation of British Columbia (ICBC),[42] for example, is an insurance crown corporation (or government-owned corporation) engaged in universal public auto insurance, including driver licensing and vehicle registration. The basic coverage plan contains protection from third party legal liability, under-insured motorist protection, accident benefits, hit-and-run protection, and inverse liability.[43] Government owned and operated systems of automobile insurance are also available in the Canadian provinces of Saskatchewan, Manitoba, and Québec. Invariably, the rates for public automobile insurance in these provinces are lower than in provinces which have private automobile insurance.[44]

Notable in these examples is the fact that the public insurance providers were specifically incorporated for the purpose of providing the monopolized service. Furthermore, being crown corporations in Canada (equivalent of government-owned and controlled corporations), their mandate is by virtue of legislative action.

IV. ANALYSIS

Given the legal bases for the establishment of a state monopoly in restraint of trade, is the grant to GSIS of such privileges justified?

Taking into account the vital criterion of public interest, PIRA might find itself fighting a losing cause. Due to the wide, almost limitless scope of the exercise of police power, the necessity for the regulation of the CTPL industry can arguably be found. The evils of a proliferation of "fly-by-night" insurance companies preying on motor vehicle owners, if proponents of the GSIS scheme are to be believed, are real and disastrous. Without the immediacy of compensation pursuant to a bona fide CTPL policy, recourse would have to be through litigation in the courts which would thereby clog

41. 54 AM. JUR. 2D § 498.

42. Insurance Corporation of British Columbia, *available at* http://www.icbc.com/inside_icbc/ (last accessed Dec. 18, 2008).

43. Wikipedia, Insurance Corporation of British Columbia, *available at* http://en.wikipedia.org/wiki/Insurance_Corporation_of_British_Columbia (last accessed Dec. 18, 2008).

44. *Id.*

up an already notoriously slow-moving justice system. Accordingly, the thousands of motorists who have subscribed to such bogus policies will effectively be swindled out of the initial premium payments they have made. All these claims and fears, however, despite being rational outcomes of the dangers sought to be avoided by the GSIS scheme, are still matters that ought to be proven by evidence. The balance the court has to weigh, therefore, is between the immediate need to monopolize the CTPL industry in consideration of public interest and the rights of insurance companies, especially those who have reputable, established, and duly-licensed business interests in the CTPL industry, and will be restrained from competing with the government grant.

As it is, there is real public necessity and interest at stake. Indeed, even the Court of Appeals did not discount the interest of the insuring public when it granted the injunctive writ against the Department Order.[45] In the end, the decision of whether to invalidate the Department Order will primarily have consider such vital questions. Undoubtedly, an efficiently-structured and reliable public automobile insurance corporation will provide important and valuable public services that may justify its creation despite an obvious restraining of trade and withholding of competition. However, experience in this country obliges skepticism in such lofty idealism.

Above all, the GSIS, despite being a government agency, may neither be properly equipped nor secured to deal with the burden of securing or insuring a large number of private automobile insurance policy subscribers in addition to its original mandate of providing social security benefits to government employees. To widen its pool to subscribers outside of government employees, assets, and properties which have in themselves government insurable interests might endanger the interests of either group. Furthermore, the Insurance Code requires a margin of solvency[46] from all

45. Alliance of Non-Life Insurance Workers v. Mendoza, CA-G.R. S.P. No. 104211, Oct. 24, 2008 at 8.

46. INSURANCE CODE, Sec. 194.

The section provides:

> An insurance company doing business in the Philippines shall at all times maintain a margin of solvency which shall be an excess of the value of its admitted assets exclusive of its paid-up capital, in the case of a domestic company, or an excess of the value of its admitted assets in the Philippines, exclusive of its security deposits, in the case of a foreign company, over the amount of its liabilities, unearned premium and reinsurance reserves in the Philippines of at least two per mille of the total amount of its insurance in force as of the preceding calendar year on all policies, except term insurance, in the case of a life

insurance companies doing business in the Philippines. The GSIS would be hard-pressed to maintain such a requirement given the amount of time to which it has been given to transform itself from a specialized insurance agency dealing mostly with government interests to a general insurance company dealing with the entire motoring public.

GSIS claims to be able to handle this crucial problem through reinsurance. Under their proposed process, GSIS will only issue a Master Policy for the CTPL and thereafter proceed to distribute the business to participating private insurance companies by reinsuring the policies with the National Reinsurance Corporation of the Philippines "which has already confirmed the participation of 43 non-life insurance corporations" to participate in such a project.[47]

Arguably, such a process would be viable if implemented correctly. It would do away with many of the concerns of the private insurance companies who see their businesses completely denied once the GSIS monopoly is approved. It will still allow them to participate in the business, even if the same would be primarily controlled by GSIS. In the case of Canadian public automobile insurance companies, the policies are sold through independent brokers licensed by the public insurance corporation.[48] In this sense, although there is a restraint of competition, supplemental services to the primary business of insurance are still open to private firms and individuals.

V. CONCLUSION

The controversy regarding the takeover of the CTPL industry by the GSIS is a polarizing one. Opponents see it as an intrusion by government into the private business and trade of its citizens for the sole purpose of greater monetary gain. Proponents see it as a cure to many of the problems surrounding automobile insurance and automobile registration in this country in general to which tighter government regulation is the answer. The fact that the issue in itself is polarizing, however, does not mean that a

> insurance company, or of at least ten per centum of the total amount of its net premium written during the preceding calendar year, in the case of a company other than a life insurance company: Provided, That in either case, such margin shall in no event be less than five hundred thousand pesos …. *Id*.

47. Valera, *supra* note 9.

48. *See generally* Insurance Brokers Association of Manitoba (IBAM), *Industry Practices Review: Relationship Between Insurance and Sales Intermediaries* (IBAM, Response to CCIR/CISRO Consultation Paper of June 3, 2005, July 2005), *available at* http://www.ccir-ccrra.org/CCIR/publications/Relationships%20between%20Insurers%20and%20Sales%20Intermediaries/35%20Insurance%20Brokers%20Association%20of%20Manitoba.pdf (last accessed Dec. 10, 2008).

compromise cannot be achieved so that the purpose behind the proposal — which by all means is valid, necessary, and reasonable for public interest — could be brought to fruition.

Firstly, the manner by which the takeover is sought to be implemented may be insufficient. In the examples discussed, legislative action through the grant of a new charter or the amendment of an existing one was necessary in order to justify the takeover of an ordinary trade by the government. As such, when the business sought to be monopolized would be the source of income and livelihood for a number of practitioners, the exercise of police power in subsequently excluding such practitioners should be by act of Congress in its plenary power to make, ordain, and establish all reasonable laws for the common good. A mere Department Order may not sufficiently address or encapsulate, at least as to its form, the necessity behind the use of the least limitable of powers of government.

Secondly, the GSIS must not be alone in taking on a market larger than it is accustomed to. The needs of its original market — government employees and government interests in selected assets and properties — are likewise as valuable as the interests of the insuring public in third party liability claims. To rush into the proposal haphazardly without taking precaution with regard to solvency and compensation issues would be to magnify the disservice it might provide twofold. The solution of reinsurance is indeed a viable remedy in the meantime. However, if the government is to be truly earnest in ensuring the safety of the motoring public by regulation through restraint of trade, it must exercise its powers resolutely and not by way of delegation. Only in this instance can it convince itself and the public in general of the indispensability of such a far-reaching state action.