

Thailand Trade Competition Act

Mr. Nipon Poapongsakorn, Senior Consultant, Thailand Development Research Institute, Thailand

I. Competition Policy

Competition Law is a tool to implement competition policy. The principle of the competition law in most countries is to improve economic efficiency and protect competition so consumer will be beneficial at the end. Furthermore, the competition law plays an important role in promoting free and fair competition in economic environment. The competition law should conform with the economic situation and social environment of individual economy.

II. Background of the Trade Competition Act

The Trade Competition Act of 1999 has been enacted in April 1999, along with the Price of Goods and Services Act of 1999. These two laws replaced the former Price Fixing and Anti-Monopoly of 1979. The 1979 Act consists of two parts, the pricing part and the anti-monopoly part. The anti-monopoly part of 1979 Act is aimed at promoting fair competition. It empowers the Central Committee to look after business structures that may create monopoly and conduct restrictive business practices. But since it created problems for enforcement, the Department of Internal Trade, who is in charged of the said Act, made the adjustment of the Act by separating it into 2 Acts: The Price of Goods and Services Act and the Competition Act.

III. Objective of the Act

The objective of the Act is to promote fair and free trade with competitive environment and control anti-competitive practices. This is based on the view that competitive markets are the best way to promote economic efficiency, and thus maximize total economic welfare. Finally, consumer will get benefit through more efficient pricing and increased choice in the products and services offered.

IV. The scope of the Act

The scope of the Act applies to all types of business operations except those of:

- central, provincial, or local administration;
- state enterprises under the law on budgetary procedure;
- group of farmers, cooperative or cooperative societies; and
- business prescribed under the Ministerial Regulation.

V. Enforcement body

Trade Competition Commission

The Trade Competition law is enforced by the authorized government body called the “Trade Competition Commission” with the Minister of Commerce as a Chairman, Permanent-Secretary for Ministry of Commerce as a Vice-Chairman, Permanent-Secretary for the Ministry of Finance and not less than 8, but not more than 12 qualified persons in field of law, economics, commerce, business administration or public administration as members, and Director-General of the Department of Internal

Trade as a Secretariat. The commission shall have the powers and duties to consider complaints, to prescribe rules for dominant position, to consider an application for permission to merge business, or to initiate the joint reduction of competition to give orders for suspension, cessation, correction, or variation of activities by business operations.

Sub-committees and investigative sub-committees

The Commission may appoint one or more specialized sub-committees and investigative sub-committees. Both of the sub-committees consist of the representative of the DIT as a member and secretary. The specialized sub-committee has duty to consider and give opinions or recommendations to the Commission. The investigative sub-committee has the power and duty to conduct an investigation and inquiry in connection with the Commission of offences under this Act and submit opinions to the Commission for further consideration.

The Appeal Committee

The Appeal Committee is another importance Committee. The Appeal Committee appointed by the Council of ministers. The Director-General of the DIT shall appoint Government Officials of the DIT to act as secretary and assistant secretaries. The Appeal Committee has powers and duties as following:

- to prescribe the rules and procedure for the appeal;
- to consider and decide on the appeal against an order of the Commission;
- to issue a written summons requiring the persons concerned to give statements or documents or evidence for the consideration of the appeal;
- to issue an order suspending the execution of the order of the Commission.

VI. Anti-Competition behaviors

Under the Trade Competition Act of 1999, the following anti-competitive behaviors are prohibited:

1. Section 25: The Abuse of Market Dominance

Business operator who have market share and sales volume greater than prescribed level are prohibited from

- 1.) unreasonably fixing or maintaining purchasing or selling prices of goods or fees for services;
- 2.) unreasonably fixing compulsory conditions, directly or indirectly requiring other business operators who are his or her customers to restrict services, production, purchase or distribution of goods, or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credits from other business operators;
- 3.) suspending, reducing or restricting services, production, purchase, distribution, deliveries, or importation without justifiable reasons, or destroying or causing damage to goods in order to be lower than market demand;
- 4.) intervening in operation of business of other persons without justifiable reasons.

2. Section 26: Mergers

Business mergers which result in amount of market share, sales volume, capital stocks or assets over specified amount will need approval from the Trade Competition Commission as it may cause monopoly or unfair competition.

3. Section 27: Collusion

Business operators are prohibited from conspiring, colluding or collaborating with another business operator in order to create monopolistic power, or reduce competition. No business operators with another business operators conduct in any of the following manners:

- Fixing selling price of goods and services
- Fixing buying price of goods and services
- controlling the market by joint agreement
- bid rigging
- locality division / customer designation
- locality division / a source of merchandise or service designation
- quantity fixing
- Quality degradation
- sole seller / provider appointment or assignment
- buying / selling condition or procedure fixing
- In the case of necessity (5-10) can be done if permission is obtained.

In case business operators have the reasonably necessary in the business and have no serious harm to the economy, they can submit an application for permission to the Commission.

4. Section 28: Agreement between domestic and overseas business

A business operator who has business relation with business operators outside the Kingdom, whether it is on a contractual basis or through policies, partnership, shareholding or any other similar form, shall not carry out any act in order that a person residing in the Kingdom and intending to purchase goods or services directly from business operators outside the Kingdom.

5. Section 29: Unfair Trade Practices

A business operator is prohibited from any unfair and restrictive act which destroy, impair, obstruct, impede, or restrict business operation of other business operators or prevent other persons from carrying out business or cause their cessation of business.

VII. Penalties

Any person who violates the law shall be imprisoned for up to 3 years or be fined for up to 6 million Baht or both. In case of the repeated commission of the offence, he or she will be liable to the double penalty.

VIII. Summary of the work on Trade Competition Act (Since 1999 until now)

1. The Trade Competition Commission established 7 Sub-Committees with concern with:

- 1.1 The cable television monopoly case and the restriction in video movies production business
- 1.2 The restriction of whisky and beer
- 1.3 Criteria and guidelines for merger
- 1.4 The unfair trade practices
- 1.5 The wholesales – retail business
- 1.6 The restriction in the motorcycle industry
- 1.7 Criteria for dominant position

2. Approved forms, rules and procedures to apply for permission of any concerted agreement amounting to monopoly, reduction of competition or restriction of competition according to Article 27 (5)-(10). They were published in the Government Gazette on February 25, 2000.

3. Approved criteria for dominant enterprise in 2 sectors.

3.1 Wholesales and retail business

- Single enterprise has market share 20% or more and last year sales volume above 27,000 million Baht
- Top 3 enterprises have the combined market share 33.33% or more and combined sales volume above 45,000 million Baht
- The market share of any individual enterprise does not reach 10% of the relevant market, such enterprise shall not be deemed as a dominant enterprise.

3.2 Motorcycle Industry

- Single enterprise has market share 33.33% or more and last year sales volume above 5 000 million Baht
- Top 3 enterprises have the combined market share 66.66% or more and combined sales volume above 10 000 million Baht
- The market share of any individual enterprise does not reach 10% of the relevant market, such enterprise shall not be deemed as a dominant enterprise

(It is now under the submit process to Cabinet to approve)

4. Establish the Technical Working Group, which comprise of the senior officer, the academic and the expert from law firm to study and set the criteria for merger that need to apply for permission from the TCC (It is now under the submit process to TCC to approve)

5. Cases received

5.1 Decision Cases 13 cases

5.2 Cases that are in the process 14 cases

VIII. The proceeding to develop the Trade Competition Act

1. Cooperation and ask for technical assistance from international organization/Competition agencies such as UNCTAD, World Bank, OECD, JICA, Taiwan Fair Trade Commission and The Australian Competition and Consumer Commission.
2. Adopted the projects to study matters to support the work of the Trade Competition Bureau.
3. To promote the Trade Competition Policy by organized the seminar, educate business operators and student and establish the radio broadcast program.