

Trade Competition Law

1 The Trade Competition Act

The Trade Competition Act, B.E. 2542 (1999) is the main piece of legislation governing competitive interactions among business operators in Thailand. The Trade Competition Act took effect on 1 May 1999. It applies to all business sectors, unless a particular sector is specifically exempted.

1.1 Scope of the Trade Competition Act

The Trade Competition Act contains provisions that are similar in many ways to those found in U.S. anti-trust laws or in the competition laws of certain European countries. The Trade Competition Act generally regulates all restrictive trade practices in all areas of business that create or might create a monopoly or reduce competition. It also established the Trade Competition Commission, a government office operating under the Department of Internal Trade, a department within the Ministry of Commerce, which is authorized to grant exemptions to prohibitions for certain types of businesses.

1.2 Abuse of a Dominant Position

The Trade Competition Act prohibits business operators from abusing their “dominant position.” A dominant position is said to exist when one or more business operators control a certain market share and enjoy a certain sales turnover. The exact levels of dominant market share and sales turnover are defined from time-to-time by the Trade Competition Commission, with the Cabinet’s approval. The current criteria for defining a dominant position were announced and came into effect on 8 February 2007. According to the criteria, business operators will be considered to have a dominant position if the business meets one of the following characteristics:

(i) it individually held a market share of at least 50% and had a sales volume of at least Baht 1,000,000,000 in the previous year; or

(ii) it was one of the top three business operators, with a collective market share of at least 75% and a collective sales volume of at least Baht 1,000,000,000 in the previous year (unless one of the individual business operators in question had a market share of less than 10% or a sales volume of less than Baht 1,000,000,000 in the previous year). It is not illegal for a business operator to hold a dominant position in the market. However, dominant business operators may not adopt certain practices that are regarded as abusing a dominant position, including unfairly fixing the price of goods or service charges; imposing conditions in a manner that unfairly forces another business operator, who is its customer, to limit production; unreasonably suspending or reducing services or production; or unreasonably interfering with the business operations of another business operator. If a dominant business operator has a market share of more than 75%, the Trade Competition Commission may order it to cease, withhold, or change its market share by complying with any criteria, procedures, conditions, and time periods the Commission establishes.

1.3 Restrictive Trade Practices Jointly Undertaken by Two or More Business Operators

The Trade Competition Act prohibits any business operator from acting jointly with another business operator to create a monopoly or to act in a way that reduces or limits competition in regard to any

goods or services, including entering into agreements or discussions regarding price or volume fixing, or market allocations.

1.4 Restrictive Trade Practices Jointly Undertaken with Overseas Business Operators

The Trade Competition Act also prohibits any business operator in Thailand from using a relationship with an overseas business operator to limit the ability of individuals in Thailand to purchase goods or services directly from such overseas business operator. This provision applies to business relationships formed by contracts, policies, partnerships, shareholdings, or other comparable methods. A clear example is the case of business operators who act as sole distributors of imported goods in Thailand. The sole distributor should not, either directly or indirectly, limit opportunities of another person in Thailand to purchase goods or services directly from an overseas business operator, for his or her own consumption.

1.5 Anti-competitive Mergers and Acquisitions

The Trade Competition Act prohibits any business operator from effecting a merger that may result in a monopoly or unfair competition, without the pre-merger permission of the Trade Competition Commission. Share acquisitions, asset acquisitions, and amalgamations all fall within the ambit of the Trade Competition Act. The Commission can prescribe conditions for the mergers that are subject to the pre-merger permission requirement, with such conditions stipulating combined market share, sales turnover, and amount of capital/shares or assets. However, the Commission has yet to prescribe any conditions of this kind.

1.6 Other Acts that Restrict Competition

As a “catch-all” provision, the Trade Competition Act generally prohibits any business operator from doing anything outside the bounds of free and fair competition, which could destroy, damage, hinder, obstruct, or limit the operation of another party’s business. While there are no guidelines explaining this catch-all provision, it is clear that in order to claim that a business operator’s trade practices are unfair, the claimant must prove that such action or conduct resulted in destruction, damage, obstruction, or limitation of the business operations of other business operators.

1.7 Permissible Restrictive Trade Practices

If certain restrictive trade practices constitute a monopoly or reduce competition but are deemed commercially necessary, they may still be undertaken by or between two or more business operators, provided the prior permission of the Trade Competition Commission is obtained.

1.8 Trade Competition Commission

The Trade Competition Commission consists of representatives of various government agencies, and can include eight to twelve experts. At least half of its members must be appointed from the private sector. The Commission is empowered to, among other things:

- make recommendations to the Minister on Ministerial Regulations to be issued under the Trade Competition Act;

- determine the market share and sales turnover that would constitute a dominant position for any business;
- consider complaints regarding violations of the Trade Competition Act;
- consider applications for permission for mergers or for permissible restrictive trade practices; and
- institute criminal legal action in respect to violations of certain prohibited restrictive trade practices, in response to petitions by aggrieved parties.

In addition, if the Commission believes that any business operator is acting in violation of the prohibitions on restrictive trade practices, it may order the business operator to cease, withhold, or correct the violation. In its exercise of this power, the Trade Competition Act clearly provides that the Commission cannot be held responsible to a business operator for any damages that arise.

1.9 Violation of the Trade Competition Act

If a business operator illicitly engages in a restrictive trade practice that injures another party, the injured party may seek compensatory damages from the operator. This right to compensation may be interpreted as extending to any business competitor or individual consumer who has been injured as a result of a violation. The injured party must file a claim within one year after it learns of or should have learned of the violation. In addition, the Trade Competition Act permits the Consumer Protection Board, or any association established under the consumer protection law, to take legal action on behalf of either an individual consumer or a member of the association. The maximum penalties for violating the Trade Competition Act are imprisonment for up to three years and/or a fine of up to Baht 6 million. A multiple penalty is imposed for repeated violations. A business operator's violation of an order of the Trade Competition Commission attracts a penalty of imprisonment for up to three years or a fine ranging from Baht 2 million to Baht 6 million, plus a daily fine of Baht 50,000 during the period of the violation. If a juristic person commits an offense, any managing directors, partners, or people responsible for the operation of the juristic person's business are also personally liable to the same penalties. The only defense available to any of these people is that they must be able to prove that the violation was committed by the juristic person without their knowledge or consent, or that they took reasonable actions to prevent the violation.

1.10 Exemptions from the Trade Competition Act

The Trade Competition Act applies to agricultural, industrial, financial, insurance, and other service businesses, but not to:

- central, provincial, or local government agencies;
- state-owned enterprises;
- agricultural cooperatives established by law; and
- other businesses, as prescribed in Ministerial Regulations from time-to-time.

As of the date of publication, no regulations have been issued by the Ministry of Commerce exempting particular businesses from the Trade Competition Act.

2 The Prices of Goods and Services Act

2.1 Scope of the Prices of Goods and Services Act

The Prices of Goods and Services Act, B.E. 2542 (1999) established the Central Prices of Goods and Services Committee, whose function is to prevent price fixing and unfair trade practices relating to designated goods and services. The Act only applies to goods or services designated by the Committee. That is, the Committee has the power, with the Cabinet's approval, to announce its control over any goods or services so as to prevent price fixing or unfair trade conditions and practices in respect to such goods or services. Once announced by the Committee, the controls can continue for up to one year, unless they are extended by another announcement.

2.2 The Central Prices of Goods and Services Committee

The Committee consists of representatives of various government agencies, and includes four to eight members designated as experts. At least half of its members must be nominated by the private sector. The Committee has the ability to impose an extensive set of regulatory measures for any goods or services under its control. For example, it can fix minimum and/or maximum purchase prices for goods or services, or can fix prices at a particular level. To supplement the Committee's tasks in areas outside Bangkok, the Act also established provincial committees.

2.3 Prohibitions and Control Measures

The Prices of Goods and Services Act prohibits:

- any person from (i) hoarding controlled goods, by having in their possession a volume exceeding the limit prescribed in the Committee's announcement; (ii) storing controlled goods in places other than those notified to the competent officials; (iii) refusing to distribute controlled goods for sale or to offer them for sale in the ordinary course of trade; and (iv) delaying the sale or delivery of controlled goods without reasonable cause; and
- any service provider of controlled services from ceasing to provide the controlled services in the ordinary course of trade and from refusing to provide controlled services or delaying the provision of controlled services, without reasonable cause.

The Act also prohibits any business operator from willfully causing the price of any good or service to become unreasonably low or high. Other control measures under the Act include the Committee's power to require manufacturers, sellers, distributors, or importers of controlled goods or services to notify the Committee's Secretary General of sales prices, standards, qualities, sizes, quantities, weights per unit, and the composition of controlled goods or services, and to display prices for any goods or services.

Violations of the Prices of Goods and Services Act are punishable by imprisonment ranging from one month to seven years and/or a fine ranging from Baht 2,000 to Baht 140,000, depending on the type of offense committed. If the violation is committed by a juristic person, its managing directors, managing partners, or other people responsible for its business operations may also be personally liable to the same penalties, unless they can prove that the action in question was conducted

without their knowledge or consent or they took reasonable steps to prevent such offense from occurring.

2.4 Exemptions

The Act applies to agricultural, industrial, commercial, service, and other similar business operators, but it does not apply to central, provincial, and local government agencies or other businesses prescribed from time to time in Ministerial Regulations.