

 THAILAND

## Legislation and Jurisdiction

### The Law

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#### What is the relevant legislation?

The relevant legislation includes the **Trade Competition Act B.E. 2542 (1999)** (the “Act”) and the following implementing rules:

- Notice on dominant business operators;
- Guidelines on unfair trade practices in the wholesales/retail business.

#### To whom does it apply?

The Act is of general application and does not make any distinction between corporations and individuals. It applies to any “**business operator**”, defined in Section 3 as “a distributor, producer for distribution, orderer or importer into the Kingdom for distribution or purchaser for production or redistribution of goods or a service provider in the course of business”.

However, under Section 4 of the Act, some categories are excluded from the application of the Act (see below, under “Exclusions”).

#### Which practices does it cover?

Chapter III of the Act (Sections 25 to 34) covers both anti-competitive practices (agreements, abuse of dominant position and mergers) and some forms of restrictive/unfair trade commercial practices.

#### Are there proposals for reform?

The Act is currently being revised.

### The Authorities

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#### Who is the enforcement authority?

The enforcement authority is the **Trade Competition Commission (TCC)**.

According to Chapter II of the Act, the Office of Trade Competition (OTCC) is established in the Department of Internal Trade within the Ministry of Commerce. Its main duties are: application and implementation of the Act and recommendations to the Minister of Commerce on the content of Ministerial Regulations based on the Act.

#### Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

The TCC is responsible for the enforcement of competition law in all sectors. However, in the broadcasting and telecommunications sectors, the National Broadcasting and Telecommunications Commission (NBTC), under the Act on Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. (2010) has the power to decide competition cases and to issue rules and regulations concerning competition in its sector.

According to the Telecommunications Business Act B.E. 2544 (2001), in operating the telecommunications business, the Commission shall, in addition to the law on competition, prescribe specific measures according to the nature of telecommunications business, to prevent the licensee from committing any act that leads to monopoly, reduction or restriction of competition in supplying the telecommunications service in the following matters: (1) cross-subsidization; (2) cross-holding in the same category of service; (3) abuse of dominant power; (4) anti-

competitive behavior; (5) protection of small-sized operators (Section 21). Any licensee who violates **Section 21** shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six hundred thousand THB or to both, and to a double penalty in the case of repeated violation (Section 69). Furthermore, in relation to the Broadcasting and Television Business Operations Act B.E. 2551 (2008), in the broadcasting business, there are specific sections concerning anti-monopoly issues (sections 31-32). Any licensee who violates section 31 or 32 shall be subject to imprisonment for a term not exceeding three years or a fine not exceeding three million baht or both and a daily fine not exceeding thirty thousand baht throughout the period of violation (Section 67)

## Anticompetitive practices

### Agreements

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#### Which agreements are prohibited?

Section 27 of the Act prohibits any agreements between business operators that may amount to monopoly restrictions or reductions of competition in any goods or services market and identifies the following prohibited agreements:

- (Sale or purchase) price fixing agreements and agreements to restrict the (sale or purchase) volume of goods or services (Section 27 (1) and (2));
- Agreements “with a view to having market domination or market control” (Section 27 (3));
- Bid rigging/collusive tendering (Section 27 (4));
- (Distribution or purchase) market partitioning and customer or supplier allocation (Section 27 (5) and (6));

- Output restrictions (Section 27 (7));
- Reduction of quality (Section 27 (8));
- Exclusive distribution agreements (Section 27 (9));
- Fixing purchase or distribution conditions (Section 27 (10)).

The list includes both horizontal and vertical agreements.

#### Which agreements may be exempted?

According to Sections 27, 35 and 37, agreements under subsection 5 to 10 above may be exempted, with or without conditions, from the prohibition (under previous permission by the TCC), where it is “commercially necessary, has no serious harm to the economy, and has no effect on due interests of general consumers” that they “be undertaken within a particular period of time”.

#### Is there any formal notification requirement and to which authority should a notification be made?

Under Section 35, business operators shall apply to the TCC to obtain permission to conclude and implement agreements that may be exempted.

#### Is there a notification form?

A notification form is available on TCC website at <http://otcc.dit.go.th/otcc/> (Thai version).

#### Are there any filing fees?

Filing is not subject to any fee.

### Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

There is an obligation to suspend the transaction until permission is granted by the TCC.

### Procedure and timeline

Under Section 36 of the Act, the TCC shall complete the assessment within 90 days, extended of additional 15 days in case the assessment cannot be completed within the deadline “by reason of necessity”.

## Monopoly and dominant position

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### Is monopoly or dominant position regulated?

Section 25 of the Act prohibits the abuse of a dominant position (referred to as “market domination”).

### What is a dominant position?

According to Section 3 of the Act and the Notice on Dominant Business Operators with Market Domination, business operator(s) have a dominant position when the following thresholds are met:

- Market share exceeding 50% market share and a turnover of at least 1,000 million THB in the previous year;
- Top three business operators with combined market shares exceeding 75% and a turnover of at least 1,000 million THB in the previous year, except business operators whose market share is less than 10% or whose turnover is less than 1,000 million THB.

The Act includes both single and collective dominance.

### When is dominant position prohibited?

Under Section 25 of the Act, the following practices by a dominant operator are prohibited:

- unreasonably fixing or maintain purchasing or selling prices;
- unreasonably fixing compulsory conditions, directly or indirectly, requiring customers to restrict services, production, purchase or distribution of goods, or restrict opportunities in purchasing or selling goods, receiving or providing services or securing credits from other business operators;
- suspending, reducing or restricting services, production, purchase, distribution, deliveries or importation without justifiable reasons, destroying or causing damage to goods in order to reduce the quality below market demand;

- intervening in the operation of other operators' business without justification.

In addition, under Section 30, the TCC can require a dominant business operator whose market share exceeds 75% to "suspend, cease or vary the market share".

#### **Can abuses of dominant position be exempted?**

No exemption is allowed.

#### **Other unilateral restrictive practices**

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##### **Which other practices are prohibited?**

Under Section 28 of the Act, "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 for personal consumption will have restricted opportunities to purchase goods or services directly from business operators outside the Kingdom".

Furthermore, Section 29 prohibits "any act which is not free and fair competition and has the effect of destroying, impairing, obstructing, impeding or restricting business operation of other business operators or preventing other persons from carrying out business or causing their cessation of business".

Procedures and sanctions are the same described below (under "Procedures").

#### **Merger control**

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##### **What is a merger?**

Section 26 of the Act regulates "business mergers", which include the following transactions:

- merger: "a merger made by a manufacturer with another manufacturer, by a distributor with another distributor, by a manufacturer with a distributor, or by a service provider with another service provider, which has the effect of maintaining the status of one business and terminating the status of the other business or creating a new business";
- acquisition of assets: "a purchase of the whole or part of assets of another business with a view to controlling business administration policies, administration and management";
- acquisition of shares: "a purchase of the whole or part of shares of another business with a view to controlling business policies, administration and management".

##### **Are foreign-to-foreign mergers included?**

The Act makes no distinction between national and foreign mergers. Section 26 regulates business mergers between business operators, which are defined in the Section 3 of the Act as distributors, producers for distribution, orders or importers into the Kingdom of Thailand for distribution or purchasers for production or redistribution of goods or service providers in the course of business.

##### **Do mergers need to be notified?**

Notification is mandatory, if the merger falls within the merger thresholds.

The TCC shall introduce thresholds (with reference to market share, sale volume, capital,

shares or assets) above which mergers will have to be notified and authorised, being otherwise prohibited. The TCC is currently drafting the implementing rules.

### **Are there any filing fees?**

The issue is under consideration and will be clarified in the forthcoming merger guidelines, which will be made available on the TCC website.

### **Are there sanctions for not notifying?**

According to the Act, a business merger which may result in monopoly or unfair competition with reference to the merger thresholds, without the permission of the Commission shall be liable to imprisonment for a term not exceeding three years and/or to a fine not exceeding six million THB (Section 51). However, since the notification thresholds have not been introduced yet, there are no sanctions for not notifying.

### **How long does it take for approval?**

Under Section 36 of the Act, the proceedings shall be concluded within 90 days, which can be extended by 15 days “by reason of necessity”.

### **Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?**

There is an obligation to suspend the transaction until permission is granted by the TCC.

### **Which mergers are prohibited?**

Under Section 26 of the Act, mergers are prohibited when they “may result in monopoly or unfair competition”.

### **What happens if prohibited mergers are implemented?**

Under Section 51 of the Act, any person who vi-

olates section 26 shall be liable to imprisonment for a term not exceeding three years and/or to a fine not exceeding six million THB.

Under Section 31, the TCC may also order the merging parties to suspend, cease, rectify or modify the transaction and impose rules and conditions for the compliance.

### **Can mergers be exempted/authorised?**

Under Section 37, 1st Paragraph, of the Act, a merger can be authorised, provided that it is “reasonably necessary in the business, beneficial to business promotion, has no serious harm to the economy and has no effect on due interests of general consumers”.

Under Section 37, 2nd Paragraph, mergers may also be approved under conditions.

### **How to apply for an exemption?**

Under Section 35 of the Act, merging parties shall submit an application for permission to the TCC, according to the procedural rules which will be introduced in the due course.

## **Procedure**

### **Investigations**

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#### **How does an investigation start?**

Under Section 8 and section 15 of the Act, the TCC can start an investigation on its own initiative or on the basis of a complaint.

A complaint may be lodged:

- by telephone (hotline 1569),
- through the TCC website (<http://otcc.dit.go.th/otcc/>),

- by email ([compro@dit.go.th](mailto:compro@dit.go.th)),
- by post to the Secretary General of the Office of Trade Competition Commission, 44/100 Nonthaburi1 Rd., Nonthaburi 11000 Thailand, and
- in person, to the above address.

### What are the procedural steps and how long does the investigation take?

Under Sections 14 and 15 of the Act, the TCC may conduct an investigation or appoint one or more inquiry sub-committees if there are reasonable grounds for suspecting an infringement of the Act. The inquiry subcommittee submits opinions to the TCC, which can report the case to the public prosecutor.

### What are the investigation powers of the TCC?

Under Section 19 of the Act, the competent official has the power, amongst other, to:

- require any person to give statements, facts or written explanations or supply accounts, records, documents or any evidence for examination;
- enter the business premises of a business operator to collect evidence of an infringement;
- arrest the person(s) responsible for an offence an offender under the Act, according to specific cases, with or without a warrant;
- collect or take goods as samples for an examination;
- attach documents, accounts, records or evidence for the purpose of examination and pursuit of infringements to the Act.

### What are the rights and safeguards of the parties?

Under Sections 31, 32, 33 and 53 of the Act, a business operator under investigation has the right to be heard, the right of appeal and the right to confidentiality.

### Is there any leniency programme?

There is no leniency programme in force. However, the possibility of introducing such a programme is being discussed.

### Is it possible to obtain any informal guidance?

Business operators may contact the following address:

Business Competition Bureau,  
Department of Internal Trade  
44/100 Nonthaburi1 Rd. Nonthaburi 11000  
Thailand

 +66 2 507 5882

 +66 2 547 5434

 <http://otcc.dit.go.th/otcc/>

 [compet@dit.go.th](mailto:compet@dit.go.th)

## Adjudication

### What are the final decisions?

The TCC final decisions are the following:

- Under Section 37 of the Act, the TCC may authorise agreements or mergers;
- Under Section 39, the TCC can revoke a permission order under Section 37 for failure to comply with its conditions;
- Under section 31, the TCC can issue a written order requiring the business operator to “suspend, cease or vary” the anti-competitive conduct;

- Under Sections 48, 49, 50, 56, the TCC can settle cases when the applicable sanction does not exceed one year imprisonment

### Which are the sanctions?

Under Chapter VII of the Act (Sections 48 to 56), the following criminal sanctions apply to any person who infringes procedural and substantive provisions of the Act:

- infringement of the substantive provisions of the Act (Sections 25 to 29): imprisonment up to three years and/or fine up to six million THB (double penalty in case of repeated offence);
- criminal sanctions for obstruction of the performance of the competent officials' duties: imprisonment up to one year and/or fine up to 20 thousand THB;
- criminal sanctions for failure to comply with a TCC order under section 30 or 31 or with the decision of the Appellate Committee under section 47: imprisonment up to three years and/or fine up to 6 million THB and daily fine not exceeding fifty thousand THB during the period in which the violation is ongoing;
- criminal sanctions for disclosure of information concerning the business or the operation of a business operator which is restricted and confidential and which such person has acquired or knows in application of duties performed under the Act: imprisonment up to one year and/or fine up to 100 thousand THB, unless the information is disclosed in the performance of Government service or for the purpose of an inquiry or trial;
- criminal sanctions for failure to comply with the written summons issued by the specialised-committee, a competent official or the Appellate Committee under Section 13(3), Section 19(1) or Section 44(3): imprisonment

for a term not exceeding three months or fine not exceeding five thousand THB or to both;

- criminal sanctions for failure to render assistance to the competent official under Section 20: imprisonment for a term not exceeding one month and/or fine not exceeding two thousand THB.

Section 54 specifies that, in case of an infringement committed by a legal person, the managing director, the managing partner or the person responsible for the operation shall also be liable, unless it is proven that the infringement has been committed without his/her knowledge or consent or he/she has already taken reasonable action for preventing the infringement.

### Judicial review

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#### Can the enforcement authority's decisions be appealed?

Under Chapter VI, Section 46, of the Act, appeals against a decision of the TCC in respect of Section 31 and Section 37 may be lodged, within 30 days, to the Appellate Committee.

Under Section 47 of the Act, the Appellate Committee shall decide within 90 days, which can be extended by 15 days "by reason of necessity". Its decisions are final, subject to appeal to the Administrative Courts of First Instance, according to the Administrative Procedure Act.

### Private enforcement

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#### Are private actions for damages available?

Under Section 40, 1st Paragraph, of the Act, any person suffering damages as a consequence of a competition infringement may initiate an action for compensation.

Section 40, 2nd Paragraph, allows the Consumer Protection Commission or any other association under the law on consumer protection to initiate an action for compensation on behalf of consumers or members of the association.

## Exclusions

### Is there any exclusion from the application of the Law?

Under Section 4, the Act does not apply to the following:

- Acts of central, provincial or local administrations;
- State enterprises under the law on budgetary procedure;
- Farmers' groups, co-operatives or co-operative societies recognized by law and having as their object the operation of businesses for the benefit of the occupation of farmers;
- Sectors fully or partially exempted from the application of the Law by Ministerial regulation. No such regulations have been issued so far.

## Enforcement Practices

Please refer to the Annex I - Case Studies.