

CHAPTER 22 TRADE REGULATION AND MONOPOLIES

In this chapter, we consider two statutes that are intended to regulate certain commercial activities. The Trade Competition Act is intended to regulate trade practices that are considered to be unfair and also to regulate monopolies in business. The Price of Goods and Services Act enables the government to issue regulations to control the supply and prices of commonly used goods and services.

Trade Competition Act The Trade Competition Act came into force in 2017 and completely replaced the previous Act of 2000.

Regulatory authority The Trade Competition Commission is the regulatory authority to oversee policy, implement the Act and draft regulations and orders under the Act.

Exclusions The Act does not apply to:

- (1) Central administration, provincial administration, or local administration.
- (2) State enterprises, public organizations or other state agencies, that is sections for the purpose of maintaining the state's stability, public interests, common interests, or arrangement of public utilities.
- (3) Farmer's groups, cooperatives, or cooperative societies recognized by law and having the objectives of operating business for the benefits of farmer's profession.
- (4) Businesses with specific laws supervising on trade competition.

Definitions In the Act,

“business” means an undertaking operated for the benefit of trade in agriculture, industry, commerce, finance, insurance, and services, and other undertakings as prescribed in regulations.

“business operator” means a seller of goods, a manufacturer of goods for sale, an orderer or importer of goods for sale, a buyer for manufacture or resale of goods, or a service provider in a business.

“goods” means an article used for consumption, including documents of rights thereof.

“service” means acceptance for engagement of work, the granting of any rights, permission to use or providing of benefits in any property or undertaking by

charging remuneration in return in money or other benefits, but excluding hire of labour.

“price” means the price of goods, and includes remuneration in return for providing services.

“market” means a market connected with goods or services of the same kind or that can be used to replace each other, taking into account the characteristics, price, or objects of usage of the goods or services, and the areas for the sale of goods or the provision of service.

“market dominant business operator” means one or more business operators in any market that has a market share and total sales exceeding the criteria prescribed by the Commission, taking into consideration any one or more market competition conditions factors, provided that the Commission shall review the criteria of market share and total sales at least once a year within three years from the date of issue of any notice by it.

In calculating market share and total sales of a market dominant business operator, this shall include market share and total sales in any market of business operators who have relationships with each other in terms of policies or management powers, according to bases prescribed by the Commission, and it shall be deemed that a business operator who has said market share and total sales is a market dominant business operator.

“competition condition factors” means the number of business operators in a market, the amount of investment money, access to significant production factors, distribution channels, business operation network, structure for business operations, government regulations, and other factors as prescribed by the Commission.

“Commission” means the Trade Competition Commission.

“Commission member” means a member of the Trade Competition Commission.

“Office” means the Office of the Trade Competition Commission.

“Secretary General” means the Secretary General of the Trade Competition Commission.

“competent officer” means the Secretary General, and the staff of the Office who hold a position not lower than a civil servant of practitioner level and who are appointed to perform duties under this Act.

“Minister” means the Minister who has charge and control of the execution of this Act.

Trade Competition Commission This is the regulatory authority appointed under the Act

Powers of the Trade Competition Commission The Commission shall have the following powers and duties:

- (1) Propose draft regulations to the Minister.
- (2) Issue regulations or notices for the carrying out of work under the Act.
- (3) Supervise business operations and prescribe guidelines for compliance so that trade competition is free and fair.
- (4) Consider complaints and conduct investigations into offences under this Act.
- (5) Pass decisions on applications made to it.
- (6) Prescribe regulations on investigation and interrogation of the investigation sub-committee.
- (7) Appoint officers for the carrying out of work under the Act.
- (8) Take criminal proceedings.
- (9) Consider fixing administrative fines, and issuing proceedings in the Administrative Court.
- (10) Summon any person to give facts, clarifications, advices, or opinions.
- (11) Send its opinions and recommendations to the Minister and the Cabinet relating to government policy on trade competition.
- (12) Provide advice to state agencies relating to rules, regulations, or orders which are obstacle to trade competition, thereby impeding, restricting competition, or reducing trade competition, and thus creating unfairness among the business operators.
- (13) Prescribe plans, strategies, and guidelines on management of the Office.
- (14) Issue regulations concerning organization structure, personnel management, budgeting, finance and property, and other operations of the Office.

(15) Carry out any other work as provided by law to be within the powers and duties of the Commission.

Office of Trade Competition Commission This office shall be established to be responsible for the administrative work of the Commission and its sub-committees.

It will monitor the behaviour of business operators that may lead to a violation of the Act and report such to the Commission.

It may receive complaints where a person claims that there has been a violation of the Act, and proceed to find facts and gather evidence in relation to the complaints so as to obtain sufficient facts for forwarding to the Commission for consideration, however, according to the regulations prescribed by the Commission.

Prevention of Monopolies and Unfair Trading No market dominant business operator shall engage in any of the following acts:

(1) Unfairly fix or maintain the buying/selling price of goods or services unfairly.

(2) Unfairly set conditions that require other business operators who are their trading partners to restrict services, manufacturing, buying, or sale of goods, or restrict their opportunities in choosing to buy or sell goods, in receiving or providing services, or in securing credit from other business operators.

(3) Suspend, reduce, or restrict services, manufacture, buy, sell, deliver, import into Thailand, without reasonable grounds, destroy or cause damage to goods, so as to reduce the quantity to be lower than the demands of the market.

(4) Intervene in the operation of business of others without reasonable grounds.

Business mergers A business operator who has merged businesses which may significantly reduce competition in any market which is in line with the bases prescribed by the Commission shall notify the result of merger to the Commission within seven days from the date of merger of business.

A business operator who is to merge business which may cause a monopoly or which may make it become a market dominant business operator must obtain permission from the Commission.

A notice under paragraph one shall specify also the minimum level of market share, total sales, amount of capital, number of shares, or quantity of assets.

Merger of business means:

(1) A merger between a manufacturer and another manufacturer, a seller and another seller, a manufacturer and a seller, or a service provider and another service provider, which results in the continuing status of a business and the termination of the other business, or there is a creation of a new business.

(2) The buying of assets either in whole or in part of another business so as to control its policy on business administration, administration, or management, according to regulations of the Commission.

(3) The buying of shares either in whole or in part of another business, directly or indirectly, so as to control its policy on business administration, administration, or management, according to the regulations by the Commission.

A notice of merger of business, and an application for permission and the granting of permission of merger of business, shall be in accordance with regulations issued by the Commission.

These provisions shall not apply to a merger of for internal restructuring of business operators who have relations with each other in term of policy or management powers, according to the regulations issued by the Commission.

Consideration of applications Applications shall be considered within 90 days from the date of receipt, and in case of necessity, the period may be extended to not more than 15 days, in which case the reasons and need for extension shall be recorded.

The criteria to be applied by the Commission shall take into account business necessity, benefits to business operation promotion, no serious loss to the economy, and lack of impact on significant benefits to consumers as a whole.

In granting permission, the Commission may prescribe a period or conditions for compliance by the business operator who is granted permission.

The Commission shall specify reasons in granting or refusing permission for merger of business, both in aspect of facts and law.

A business operator who is notified of the order of the Commission and disagrees with it has a right to issue proceedings in the Administrative Court within 60 days from the date he is so notified.

Procedure after permission granted A business operator who is granted permission to merge its business shall proceed according to the time and conditions prescribed by the Commission.

Where there is a violation or a failure to comply with such requirements, the Commission shall have power to revoke the permission either in whole or part, and may prescribe a period of time for compliance therewith.

Monopolies and reduction of competition No business operator may engage in any acts jointly with other business operators in the same market which results in a monopoly or reduction of competition or restriction of competition in that market in any of the following ways:

- (1) Fix purchase or sale prices or any trade conditions, either directly or indirectly, which affect the prices of goods or services.
- (2) Limit the quantity of goods or services that each business operator is to manufacture, buy, sell, or provide services, as agreed.
- (3) Conspire to make agreements or conditions so that a party may win a bid or tender for goods or services, or prevent a party from participating in a bid or tender for goods or services.
- (4) Designate and divide localities where each business operator may sell or restrict the sale or purchase of goods or services in such localities, or specify a buyer or seller whom each business operator may sell or buy goods or services, whereby other business operators may not buy or sell or buy the said goods or services.

These provisions shall not apply to an act between business operators who have relations with each other in terms of policy or management powers according to regulations issued by the Commission.

Business operators may not engage in collaborative acts No business operator shall engage jointly with another business operators in any act which is a monopoly or a reduction of competition or restriction of competition in any market in any of the following ways:

- (1) Determine conditions between business operators who are not competitors in the same market.
- (2) Reduce the quality of goods or services to be of a lower quality than previously manufactured for sale or provision of services.
- (3) Appoint or assign any person to be the exclusive seller or provider of the same, or the same kind of, goods or services.

(4) Set conditions or practices relating to the buying or sale of goods or services for compliance according to that agreed.

(5) Any mutual agreement in other ways as prescribed by the Commission.

These provisions shall not apply to the following cases:

(1) Acts between business operators who have relations with each other in terms of policy or management powers according to the regulations issued by the Commission.

(2) An agreement in a business with the object of manufacturing development, distribution of goods, and promotion of technical or economic progress.

(3) An agreement between business operators of different levels, whereby a party is the provider of rights to use goods or services, trademarks, business operation methods, or business operation support, and the other party is the receiver of such rights and has the duty to pay for the said rights, by fees or any other considerations in return as specified in the contract.

(4) The descriptions of agreements or forms of business shall be according to that prescribed in Ministerial Regulations under the recommendation of the Commission.

The agreements under paragraph one (2) and (3) must not create a restriction that is more than necessary in achieving the benefits mentioned above, and must not create a monopoly power or restriction of competition in the said market significantly, taking into account the impact on consumers.

Prohibited acts by business operators No business operator shall engage in any acts which cause loss to other business operators as follows:

(1) Restrict the business operations of other business operators unfairly.

(2) Use superior market power or bargaining power unfairly.

(3) Fix trade conditions which are a restriction or impediment to the business operations of other persons unfairly.

(4) Other acts as prescribed by the Commission.

Not to cause a monopoly or trade restrictions wit overseas business operators No business operator in Thailand shall execute a juristic act or a contract with a business operator abroad without reasonable grounds, which

causes a monopoly or a trade restriction unfairly and which has a serious impact on the economy and the interests of consumers as a whole.

Application for a decision of the Commission In order to afford convenience for business operations, a business operator may apply to the Commission to consider passing a decision in advance on the following issues:

- (1) The acts of a market dominant business operator.
- (2) Business operations as described in the Act.

The submission of an application as above shall be in accordance with regulations prescribed by the Commission.

In determining an application under paragraph one, the Commission may impose conditions for compliance by the business operator so as to be in conformity with this Act.

Decisions of the Commission A decision of the Commission shall bind only the applicant and within the scope and period prescribed by the Commission. If later it appears to the Commission that the information received from the applicant and used in making the decision of the Commission is inaccurate in a material part, or the applicant fails to comply with conditions prescribed by the Commission, the Commission shall revoke the decision and notify the business operator.

Power of the Commission to issue orders Where the Commission has obtained evidence that it believes that a business operator violates or is about to violate its obligations under the Act, the Commission shall have power to issue a written order to the business operator to suspend, stop, or rectify the said actions, in accordance with regulations prescribed by the Commission.

In issuing an order under paragraph one, the Commission may impose any conditions necessary to achieve the objects of this Act.

A business operator who has received an order under paragraph one and disagrees with it has a right to issue proceedings in the Administrative Court within 60 days from the date of receipt of the said order.

Reasons for the decision The Commission must give reasons on issuing an order both regarding facts and law.

An order under paragraph one shall be notified to the business operator within seven days from the date of it being passed by the Commission, subject to a right of appeal.

Compliance A person who is notified of the order shall comply with the said order, except where the Administrative Court has issued a judgment or order suspending execution under the order or revoking the order of the Commission.

Competent Officers An officer shall have the following powers:

(1) To send a summons calling any person to give statements, facts, or to make clarification in writing, or to send books of account, registers, documents, or any evidence, for examination or consideration.

(2) Enter into a place of work, manufacture, sale, purchase, storage of the goods, the place of providing services, of any business operator or any person, or other places, when there are reasons to suspect there will be a violation of the provisions of this Act, so as to inspect to ascertain if proceedings are in accordance with this Act, or to conduct a search and seize or attach documents, books of account, registers, or other evidence, for the purpose of inspection, and to proceed with legal proceedings under this Act.

In this respect, he shall have power to make enquiries regarding facts or to demand books of account, registers, documents, or other evidence, from the business operator or any persons concerned, and to order said persons who are at the said location to carry out any thing as deemed necessary.

(3) Retain or take away goods in suitable quantity for use as samples for inspection or analysis without making payment, according to the bases prescribed by the Commission.

In the case of (2), if it is a search under the Criminal Procedure Code, there must be a search warrant, except where there are reasons to believe that the documents or evidence may be removed, hidden, destroyed, or changed from their original condition, if there is a delay in obtaining such a search warrant, a search, seizure or attachment of documents or evidence related to the commission of offences can be conducted without a search warrant, however, it must be according to the Criminal Procedure Code relating to searches, but no search shall be conducted during night time, except where it is the operating hours of such place.

Issuing proceedings for damages A person who sustains loss arisen from the violations of duty under the Act may issue proceedings claiming damages from the offender.

In issuing proceedings for damages, the Consumer Protection Board, or an association or foundation recognized by the Consumer Protection Board, shall have a right to issue proceedings claiming damages on behalf of consumers or the members of the association or foundation, as the case may be.

Limitation period As to the issuing of proceedings claiming damages, if it is not issued in court within one year from the date the person sustaining damage knows or should have known of such incident, the right to issue proceedings shall be terminated.

Criminal Penalties The Act contains criminal penalties for breach of certain duties.

If the offender is a juristic person, if the offence was committed as a result of an order or an action of a director or the manager or any person who is responsible for the operations of said juristic person, or where the said persons have a duty to order or to take action but failed to do so, thereby causing the said juristic person to have committed the offence, the said persons shall be liable to punishment as provided for such offence as well.

An injured party shall have a right to file a complaint about the offences to the Commission for consideration under this Act, but shall have no right to file a criminal lawsuit himself.

Administrative Penalties The Act contains administrative penalties for breach of certain duties.

Where the offender who shall be punished by administrative fine is a juristic person, if the commission of offence arose from an order or action of a director or the manager or any person who is responsible for the operations of said juristic person, or where the said persons have the duty to issue an order or to take action but failed to do so thereby causing the juristic person to have committed the offence, the said persons shall be liable to the punishment provided for such offence as well.

Prices of Goods and Services Act (1992)

Purpose This Act enables controls to be imposed on the price of goods and services. It applies to all businesses, including agriculture, industry, commerce and services.

Enforcement Enforcement of the Act is through a central Commission on Prices of Merchandise and Services or Provincial Commissions on Prices of Merchandise and Services. These Commissions in turn come under the supervision of the Department of Internal Trade of the Ministry of Commerce.

Exclusion The Act does not apply to activities of central or local government.

Powers In order to control the purchase price, distribution price or cases of unfair trade, the Cabinet has authority to prescribe any goods or services as controlled goods or services.

The Cabinet has, amongst other things, power to:

1. prescribe the volume, storage place, cost, expenses, production plan, plan for import, plan for export, purchase plan, distribution plan, plan to change the price or other detail or discount in distribution, production process and method of distribution of controlled goods or services;
2. prescribe the storage or increase the volume of reserve of controlled goods and prescribing area and place for reserve of controlled goods;
3. prohibit or permit the export or import into any area the controlled goods;
4. order a business operator to improve efficiency in production, to import into Thailand, purchase, distribute or store controlled goods or services, including to stop or to reduce the expense prescribed as excessive;
5. arrange for rationing in the purchase and distribution of controlled goods or services;
6. order the sale of controlled goods or services according to the volume and price prescribed, including ordering the sale to the authority or any person as prescribed;
7. prohibit the sale gift, use, transfer or change the condition of controlled goods or services in excess of the volume prescribed;
8. prescribe measures to protect hoarding of controlled goods or services or possession of controlled goods in excess of the volume prescribed.

A business operator may not do any thing with intent to cause the price to become lower or higher than appropriate or cause upheaval to the price of any goods or services.

No person may hoard controlled goods in excess of the volume prescribed or keep controlled goods in a place other than that notified to a competent official, nor take out controlled goods for distribution or offer for sale as normal or refuse to distribute or delay the distribution or delivery of the controlled goods, without good reason.

No operator of controlled services may cease to provide normal services or refuse to provide services or delay services, without good reason.

Priorities for enforcement The Department of Internal Trade maintains a list of products the prices of which are regulated under the Act. As at October 2006, the list is divided into three parts, as follows:

Sensitive List – this consists of gasoline oil, diesel oil, milk powder, fresh milk, wiring/cabling and delivery services.

Priority Watch List – this consists of sugar, fertilizer, animal feed, tyres, cement, galvanised iron, steel rods, steel sections, steel sheets (hot/cold rolled and stainless) and repair services.

Watch List – this lists 204 other products and services in everyday use.

Enforcement The Act provides for a system of fines and imprisonment for breach of particular duties imposed. Where the offender is a juristic person, the managing director, managing partner or person responsible for management may face personal liability.

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