



TMI Eyes No. 22: Trade Competition Law and Business

In the course of business, actions such as setting prices, determining quantities, or collaborating on agreements may seem like natural operations or exercises of business freedom. However, these actions could fall under the scope of Trade Competition Act, B.E. 2560 (2017) (“TCA”).

In this article, TMI explores the role of trade competition law in shaping business practices.

What Does TCA?

The aim is to promote fair competition, encourage market efficiency, and prevent monopolies or restrictive practices that harm consumers, businesses, or the economy. The law ensures transparency and fairness by regulating four key areas:

1. Abuse of Market Power

Businesses with significant market power can heavily influence market conditions, and abusing this power negatively impacts competitors and consumers. The law prohibits such practices to ensure fairness.

Market power is determined based on criteria set by the Trade Competition Commission of Thailand (“TCCT”):

- 1) A single operator has market power if it holds 50% or more market share and at least 1 billion baht in revenue in the previous year.
- 2) The top three operators collectively hold 75% or more market share unless one has less than 10% of the market shares or under THB one billion revenue.

This includes businesses under common control, whose combined market share defines their power. Section 50 prohibits specific practices by dominant operators:

- 1) Unfair Pricing: Setting prices excessively high or below cost to eliminate competitors.
- 2) Unfair Contract Terms: Imposing restrictive conditions on partners, limiting competition.
- 3) Supply Restrictions: Creating shortages to inflate prices and reduce consumer options.
- 4) Unjustified Interference: Using influence to disrupt competitors’ operations unfairly.

By curbing these actions, the law fosters fair competition and protects consumers and other businesses.

Case 1: TCCT's Ruling dated December 22, 2022

The accused operates a movie theater business and holds a market share ranking among the top three in Thailand's cinema industry. Collectively, these three operators account for at least 75% of the market share. However, one of the three operators had annual sales of less than THB one billion in the preceding year.

As a result, the accused, along with the other top operators, does not qualify as a business with market power under the criteria outlined in the Trade Competition Commission's Notification on Market Dominance, issued on September 1, 2018.

Therefore, the actions of the accused cannot be considered a violation of Section 50 of the TCA.

Case 2: TCCT's 's Ruling dated December 15, 2022

The accused was a business operator with market power. The accused unilaterally deducted online ticketing and Ticketing Kiosk fees from the agreed revenue share for movie ticket sales without obtaining consent from the movie producers or distributors who supplied films to the cinemas operated by the accused. Moreover, these terms were not formalized in writing. TCCT considers that the actions of the accused constitute a violation of the Trade Competition Act, B.E. 2560 (2017), Section 50(1), which prohibits business operators with market power from unfairly determining or maintaining product or service prices.

Case 3: TCCT's Ruling dated September 14, 2023

The business operator with market power, refused to sell carbon dioxide gas to the complainant, who is an occasional buyer and not a regular contractual trading partner. This decision was made due to a sudden decline in the availability of natural gas extracted from the Gulf of Thailand, which led to a reduction in carbon dioxide gas production. Furthermore, the respondent needed to adhere to contractual obligations and manage the remaining supply of carbon dioxide gas to prioritize existing contractual trading partners.

As such, the business operator's actions do not constitute a refusal to sell goods or services to trading partners in a manner that imposes unfair conditions, restricts purchasing or selling opportunities, limits access to services, or hinders access to credit from other business operators, as prohibited under Section 50(2) of the Trade Competition Act, B.E. 2560 (2017).

[To be continued]


TMI will discuss mergers and acquisitions under the TCA in the article next month.



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