



TMI Eyes No. 23: Trade Competition Law and Business Part Two

The Trade Competition Act (“TCA”) plays a crucial role in regulating mergers and acquisitions (M&A) to ensure that such activities do not create unfair market dominance or harm competition. In this article, TMI explores the regulatory requirements and compliance procedures involved in M&A activities.

2. Mergers and Acquisitions

In the business sector, M&A is a business plan often implemented to increase financial growth, acquire new assets or customers, or expand into new markets. In this regard, section 51 of the TCA regulate consolidation activities in three main forms as follows.

- (1) The merger of producers with producers, distributors with distributors, producers with distributors, or service providers with service providers, which results in the continuation of one business while the other business ceases to exist or the creation of a new business.
- (2) The acquisition of all or part of the assets of another business to control the business management policy, administration, or management in accordance with the criteria set by the Commission.
- (3) The acquisition of all or part of the shares of another business, whether directly or indirectly, to control the business management policy, administration, or management in accordance with the criteria set by the Commission.

If the proposed merger between two entities results in the new business being classified as a dominant position in a market or establishes a monopoly, the parties involved must seek prior approval from the Trade Competition Commission of Thailand (“TCCT”) before proceeding.

The dominant position is determined based on criteria set by the TCCT, as explained in the previous article. As for monopolization, as defined by the TCCT, it refers to a single business operator in a particular market that has the power to independently set the price and quantity of its goods or services and generates sales revenue of one billion baht or more.

In contrast, if the merger only causes a significant reduction in market competition, the merging parties are merely required to inform the TCCT of the merger’s outcome. The merger of businesses that may result in a significant reduction of competition in a particular market is determined based on criteria set by the TCCT:

- (1) The merger of businesses where the sales revenue of either one of the business operators or the combined business in a particular market is one billion baht or more.

- (2) The merger does not lead to monopolization or the establishment of a business with market dominance.

However, a merger for internal restructuring within business operators with a policy or control relationship, as per the Commission's criteria, is exempt from Section 51, Paragraphs 1 and 2, as they are considered a single economic entity with no competition between them.

Case 1: TCCT's Ruling dated August 1, 2024

Company Z acquired 100% of Company B's voting shares from Company BB, becoming the sole shareholder of Company B. Therefore, it qualifies as the acquisition of voting shares exceeding 50% of another business operator, as stipulated by the TCCT's announcement.

Company Z does not hold shares or majority voting power in Company B, nor control the appointment of its directors. Additionally, neither of them is under the control of the same business operator, meaning there is no policy or control-related connection between them. Thus, this is not an internal restructuring eligible for exemption.

The business operators involved in the combination have no market power, as neither had a market share of 50% or more last year, and they were not among the top three companies with a combined market share of 75% or more. Therefore, this does not constitute a monopoly or market dominance and does not require the TCCT's approval.

However, since the combined business turnover in the relevant market exceeds one billion baht, meeting the criteria for a business combination that may significantly reduce competition, it must be notified to the TCCT within seven days of the merger, as per Section 51, Paragraph 1 of the TCA.

Case 2: TCCT's Ruling dated April 4, 2024

Company A acquired 100% of Company Lor's shares from L.1 and L.2, becoming its sole shareholder.

Company A is not a business operator in Thailand but is considered one under Section 5 due to its related entities, Company A.1 and Company A.2, in Thailand and generating revenue in Thailand.

Company Lor's major shareholders are from L, with related entities in Thailand, such as Company Lor.1. However, the merger involves a transaction in Spain, and Company Lor has no sales revenue in Thailand, nor does it have any business entities with direct policy or executive control relationships, or subsidiaries, operating businesses in Thailand. Thus, Company Lor is not considered a business operator under the TCA.

This merger involves a business operator and a non-business operator, and as such, does not meet the criteria under Section 51. Therefore, market scope, sales revenue, or market share are not required to be considered for compliance with the merger regulations.


[To be continued]

TMI will discuss cartel conducts and unfair trade practices under the TCA in the article next month.

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