



TMI Eyes No. 24: Trade Competition Law and Business Part Three

In this article, TMI provides the final section of our trade competition series, focusing on cartel conduct and unfair trade practices. These practices can disrupt fair market conditions and hinder healthy competition. To protect consumers and ensure a level playing field, regulations strictly prohibit monopolization and other unfair trade tactics. The following outlines the specific conduct prohibited under the trade competition law.

1. Horizontal Cartel Conduct

Under Section 54 of the TCA, businesses that are competitors within the same market are prohibited from engaging in activities that reduce or limit competition. This includes agreeing on prices or conditions that affect pricing, limiting the quantity of products or services produced or sold, influencing auction or bid outcomes, and dividing the market to control which businesses buy or sell certain goods.

2. Vertical Cartel Conduct

Under Section 55 of the TCA, businesses that are not direct competitors in a market must also avoid actions that restrict competition. This includes creating unfair conditions between non-competing businesses, lowering the quality of goods or services compared to previous levels of production, sale, or service, appointing one exclusive seller for a product or service, setting strict conditions for buying or producing goods to follow agreed terms, and entering joint agreements as prescribed by the Commission's notification.

3. Unfair Trade Practices

Under Section 57 of the TCA, business operators are prohibited from harming other businesses by unfairly restricting their activities, misusing market or bargaining power, setting trade conditions that limit or obstruct their operations, or engaging in any other conduct as defined by the Commission's notification.

For further clarification, the following case studies are outlined:

Case 1: TCCT's Ruling dated April 20, 2023

X and Y sold religious products under the same trade name in Company A's department store on a consignment basis, without a written agreement or clear terms for termination. Company A's manager terminated the contract, citing a change in sales policy. However, the true reason was personal conflicts between X and a director of Company A. This unjust termination harmed X and Y, causing them to lose their income. Although they attempted to sell products elsewhere, the damage remained.

The termination of the contract by Company A's manager constitutes a condition that unfairly restricts or hinders the business operations of another business by refusing to do business with a partner without a justifiable reason, as outlined in Section 57(3) of the TCA. As a result, both the manager and the director of Company A are liable for the unlawful termination under Section 84 of the TCA, as they instructed or allowed the company to act unlawfully.

Case 2: TCCT's Ruling dated February 25, 2021

A group of businesses in the computer distribution industry, including main distributors, large retailers, and small retailers, colluded to import and distribute only computers with preloaded Windows from a factory. If any party violated this agreement by selling notebooks without Windows, small retailers would stop ordering from the non-compliant manufacturer or distributor.

Additionally, support was sought from company Z to promote the sale of Windows-preloaded computers and pressure manufacturers to only offer quotations for such products. Evidence shows a significant decrease in orders for notebooks without Windows and the agreement was communicated through emails, Line groups, and meetings in hotels.

By setting conditions or procedures regarding the purchase or sale of goods to align with the agreed terms, and by restricting buyers from purchasing other products, within the market scope limited to notebooks sold in Thailand, this arrangement constitutes cartel conduct under Section 55 (1) and (4) of the TCA.

TMI's Final Note

Following an overview of the key business activities governed by the TCA, it is important to exercise caution before proceeding. TMI hope that our trade competition series has provided valuable insight into the legal framework that upholds fair competition and highlighted the critical importance of complying with the relevant regulations.



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