



## Proposed amendments to Thailand's Trade Competition Act

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The cabinet recently passed a resolution that amends the Trade Competition Act BE 2542 (1999). The draft is now being considered by the National Legislative Assembly. Businesses should be aware of and prepare for major changes ahead, as the new law may become effective at the end of this year.

The Office of the Thai Trade Competition Commission (OTCC) is the main enforcer of the Trade Competition Act. Overall, the Act aims to regulate fair competition among business operators in the following key areas:

unlawful exercise of market dominance;

a merger that may form a monopoly, causing unfair competition;

collusion that forms a monopoly, restricting competition; and

catch-all unfair trade practices.

The current Act has proved ineffective, to put it kindly, with not a single successful prosecution in more than 16 years. The amended Act introduces more stringent and extensive provisions as well as higher penalties for violations. It would introduce the following key amendments:

The definition of "business operator" is broader. Under the draft, "business operator" now includes affiliated companies as well as group companies. If a company within a group engages in anticompetitive practices, the OTCC would focus its investigation on the entire group and not only the individual company.

Violations committed outside Thailand are punishable. Any violations that have an anticompetitive effect on Thailand would be punishable in Thailand. As a result, companies that previously relied on territorial divides to engage in anticompetitive behaviour from overseas that had an anticompetitive effect on Thailand could now be subject to punishment in Thailand.

The OTCC must be notified of certain merger activities. Merger activities that may cause a substantive reduction in competition must be reported to the regulator prior to the merger, and the relevant financial statements filed continuously with the OTCC for it to monitor the effect of the merger for three consecutive years.

Criminal penalties will be adjusted. There will be criminal penalties for certain violations. A fine may amount to 20% of a company's revenue in the year of the violation. This has the potential to result in significantly higher fines. If there is a violation of an OTCC order, administrative sanctions may be imposed and the OTCC will determine the fine.

The OTCC, at its discretion, may decrease the fines imposed on business operators that are not the main actors in collusion or restriction of competition causing severe impact to the market, if they cooperate to provide substantial evidence of the violation.

State enterprises will be subject to the Act. The current Act offers blanket immunity to state enterprises. Under the amended Act, however, they will not be immune unless they fall within exceptions granted to state enterprises in the fields of national security, public benefit, common interest, and public utility.

State enterprises that are subject to the Act and engage in anticompetitive practices may incur both criminal and civil penalties. This is because the private sector would be competing with these state enterprises.

The definition of "market dominant operator" (MDO) will be reviewed periodically. Under the existing Act, the criteria to be classified as market dominant are as follows:

1. Any business operator in any particular goods or services market that has a market share in the previous year of 50% or more and has a sales turnover of at least 1 billion baht; or
2. Any business operator falling within the top three operators in any particular goods or services market which together have a market share in the previous year of 75% and sales turnover of at least 1 billion baht (unless one of these three has a market share in the previous year of lower than 10% or sales turnover of less than 1 billion baht).

Under the draft law, this longstanding definition will be reviewed and revised at least once every five years. The OTCC is empowered to determine the criteria to be classified as an MDO.

If a business operator is classified as market dominant, its obligations and scrutiny under the Act would be higher. For example, Section 25 of the Act, which prohibits unreasonably fixing or maintaining purchase or sale prices of goods or fees for services, applies only to MDOs. Business operators should therefore keep abreast of the Act's amendments to determine whether or not they are classified as market dominant, as they may be subject to more provisions.

Companies face much heavier fines for violations of the new Act. Business owners should therefore ensure that they fully understand and comply with its provisions.

The OTCC, meanwhile, is undergoing structural reform to increase its impartiality and independence in terms of personnel. The prospect of an increased budget is also on the horizon, which would enable the OTCC to more effectively enforce trade competition laws and regulations.

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