



<< Left
Sappaya Surakitjakorn
Attorney-at-Law
sappaya.s@tilleke.com

<< Right
Nopparat Lalitkomon
Attorney-at-Law
nopparat.l@tilleke.com

The Development of Trade Competition Legislation in Thailand

The competition law regime in Thailand has recently undergone a number of significant changes and promising developments, starting with the implementation of the Trade Competition Act B.E. 2560 (2017) (TCA) on October 5, 2017.

In 2018, the Trade Competition Commission (TCC) passed major guidelines that clarified the criteria for considering fundamental offenses under the TCA (i.e., abuse of dominant position, hardcore cartels, non-hardcore cartels, and unfair trade practices), as well as the merger control regime under the TCA.

More promising still, the TCC proved to be a very active organization in 2019, issuing subordinate legislation and actively pursuing enforcement of the TCA. In August 2019, the TCC carried out its first enforcement in respect to three competition cases that were investigated by the previous commission. Summaries of these three precedent cases are provided below.

Abusing a Dominant Position in the Market

The first case, which occurred between October 2011 and July 2012, involved an energy drink manufacturer that had a dominant position in the energy drink market. The manufacturer was alleged to have prohibited its distributors from selling the products of its competitors. The TCC ruled that the energy drink manufacturer committed an offense by abusing its dominance, in contravention of the Trade Competition Act B.E. 2542 (1999)—the legislation that the TCA replaced. The TCC imposed aggregate fines of approximately THB 12 million, consisting of separate THB 6 million fines on both the company and the company's director.

Unfair Trade Practices: Buyers

A case involving two buyers of agricultural products occurred during the enforcement of the 2017 version of the TCA. The TCC ruled that the buyers had engaged in unfair trade practices by threatening other prospective buyers and prohibiting them from purchasing agricultural products from sellers based in the same area as the offenders. The TCC imposed a THB 25,000 fine on the offenders, initially calculated as 10% of the offenders' total turnover during the year of the offense (the total turnover was THB 500,000) and further reduced by half due to the offenders' cooperation and in light of it being their first offense.

Unfair Trade Practices: Retail Business Operator

A retail-related case also occurred under the 1999 act. In 2011, a hypermarket operator launched a promotion by which customers could exchange a competitor's coupon with its own coupon for double the value. The hypermarket operator was found guilty of engaging in unfair trade

practices under section 29 of the 1999 act (now section 57 of the TCA) during January, July, and August of 2011. However, the TCC did not impose a criminal fine on the hypermarket operator, as the 1999 act had already been repealed when the TCC's decision was made. The TCC also could not impose an administrative fine under section 57 of the current TCA, because this would have been contrary to the principle of non-retroactivity.

Subordinate TCA Legislation Issued in 2019

In 2019, the TCC issued more sector-specific guidelines, which aimed to prevent wholesalers, retailers, and franchisors from engaging in unfair trade practices with their business partners. The most recent of these was a notification that focused specifically on franchise businesses; this is covered in detail in another article in this issue of *Informed Counsel*.

Some months prior to this was a notification that dealt with determination of unfair trade practices in wholesale and retail businesses. The Notification Regarding the Guidelines for the Consideration of Unfair Trade Practices in a Wholesale and Retail Business came into force on July 20, 2019. It sets out the criteria for the consideration of unfair trade practices and provides a list of the types of conduct that wholesalers and retailers (e.g., hypermarkets, department stores, supermarkets, convenience stores, etc.) are prohibited from undertaking in their dealings with manufacturers or distributors (including importers). These types of prohibited conduct can be further classified into eight categories:

- ▶ Unfairly fixing a low purchasing price from the manufacturer or distributor (including forcing the manufacturer or distributor to provide a discount for products already delivered);
- ▶ Unfairly demanding economic benefits from the manufacturer or distributor;
- ▶ Unfairly returning the purchased goods without a justifiable reason;
- ▶ Unfairly setting contractual conditions in the consignment agreement;
- ▶ Unfairly forcing the manufacturer or distributor to purchase goods or services without a justifiable reason;
- ▶ Unfairly assigning duties to the personnel of the manufacturer or distributor without prior agreement or the consent of the manufacturer or distributor;
- ▶ Unfairly refusing to accept products that are specifically ordered or made for the wholesaler or retailer (e.g., private brand, house brand); and
- ▶ Other unfair trade practices that may cause damage to a manufacturer or distributor, such as delaying payment for the purchase of goods, refusal to deal, or delisting of stock.

Going Forward

In 2020, the TCC will focus on releasing more guidelines for specific regulated sectors such as the telecommunications, financial, insurance, and energy sectors. The TCC is also in the process of drafting additional guidelines for the consideration of mergers under the TCA. In terms of enforcement, the TCC has revealed that there are around 40–50 cases relating to offenses under the TCA that remain under investigation. As the TCC continues to actively shape the evolution of competition law in Thailand, it is anticipated that the Thai competition law regime will see more significant developments and positive changes in the years to come. 🍀