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OECD Global Forum on Competition

HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT

Contribution of Thailand

-- Session IV --

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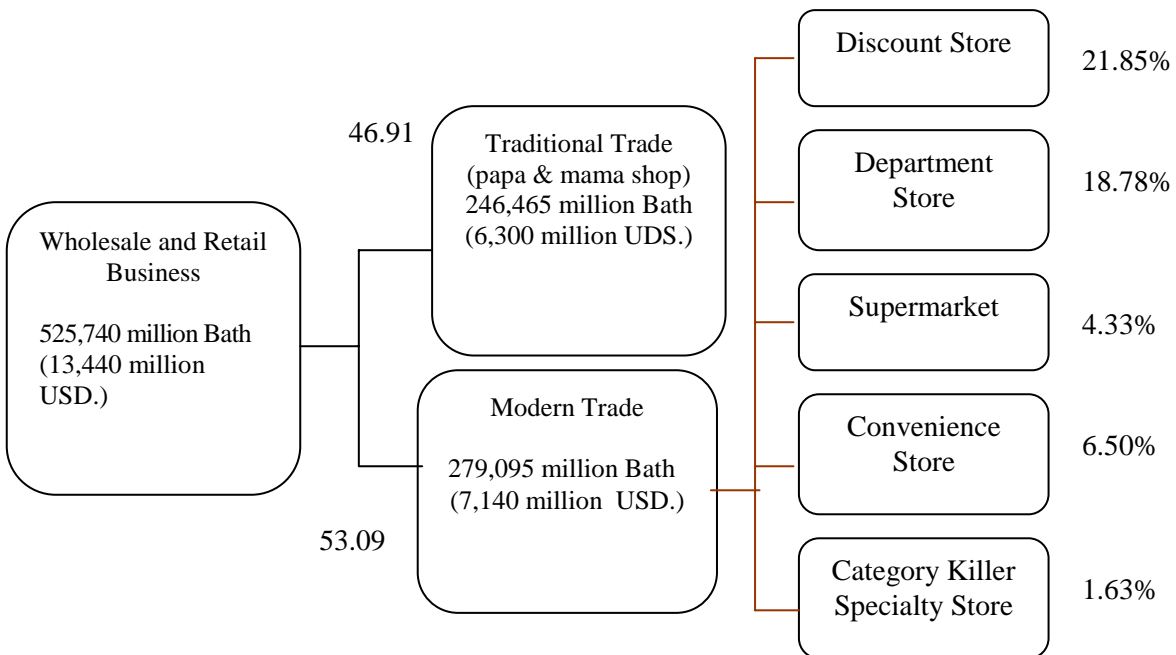
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**THE ENFORCEMENT OF LAW ON UNFAIR TRADE PRACTICES
IN THE WHOLESALE AND RETAIL BUSINESSES IN THAILAND¹**

1. Owing to the Thai Trade Competition Act has just come into force for only 4 years. The enforcement of the Law in order to supervise unfair trade practices in the wholesale and retail businesses in Thailand is a new experience.

1. Briefing of the whole sale and retail businesses in Thailand

2. In the year 2002, the market volume of whole sale and retail sale businesses was approximately 525,740 million Bath. (13,440 million USD.) The market could be divided into 2 groups. One was Traditional Trade (traditional papa & mama shops) with the trade volume of 246,645 million Bath, (6,300 million USD.) which was 46.91 % of the total trade volume. Another one was Modern Trade with the trade volume of 279,095 million Bath, (7,140 million USD.) which was 53.09 % of the total trade volume. The Modern Trade group could be divided into 5 categories namely 1) Discount Store 2) Department Store 3) Supermarket 4) Convenience Store 5) Specialty Store or Category Killer. Among them, the Discount Store was the market leader. There were 4 different chains of Discount Store in Thailand i.e. Tesco Lotus, Big C, Carrefour and Macro.



3. From the chart, it can be seen that the market volume of wholesale and retail businesses in Thailand was very large. It also has had a very high growth rate, this can be seen from the increasing of registered capital of the Discount Store group from 7,599 million Bath (195 million USD.) in 1996 to 54,550 million Bath (1,395 million USD) in 2003 and the increasing of number of chain stores of Discount Store from 36 in 1996 to 126 in 2003.

2. Complaints on the unfair trade practices

4. There were complaints on the unfair trade practices in the wholesale and retail business in Thailand. The complaints were made by suppliers on discount stores concerning the unfair trade practices, which were not usual trade practices in the area of Entrance Fee, Rebate, House Brand, Delist, B2B E-Commerce, Distribution Center, Roll Back etc.

3. Unfair Trade Practice under section 29 of Thai Trade Competition Act

5. Section 29 of Thai Trade Competition Act prescribe that “ A business operator shall not carry out any act which is not free and fair competition and has the effect of destroying, impairing, obstructing, impeding or restricting business operation of other business operators or preventing other persons from carrying out business or causing their cessation of business”

6. It is not clearly defined in the Act of the characteristics of practices or actions that violate to the Act. So that, the Trade Competition Commission has set up a Specialized Sub-Committee to study the guidelines for the consideration of unfair trade practices. The purpose of the study is to specify that what trade practices are usual and what trade practices are unusual. The study is carried out base on the information from business operators in country and guidelines from foreign countries. The Specialized Sub-Committee has met the preliminary conclusion that the principle of fair trade in wholesale and retail businesses are 1) no coercion 2) no discrimination 3) clear criteria 4) advanced agreement 5) no restriction and fair competition. And the guidelines for consideration of what practices can be regarded as unfair trade practices are as follows

1. Setting unfair sale price
2. Using dominant power the exercise of powerful bargaining power that trade advantage of others without appropriate reason in a manner that destroys , intervenes, obstructs or limits others business or that prevent other from doing their business or forces them to leave the scene.
3. Coerce or persuading customers to do business with wholesaler/retailer without any appropriate reason.
4. Unequal treatment of diligent suppliers where is an active of price discrimination or wholesaler/retailer refuses to do business with certain suppliers without appropriate reason.
5. An act of acquiring trade information, business secret, supplier's technology and unfairly using it to compete with suppliers.

7. The guideline was introduced to the public in September 2003 and there were various opinions from relevant sectors such as wholesale businesses, retail businesses, The retail association etc. The opinions are focused on the words, phrases and sentences have broad meaning, so they have to be clarified e.g. “without proper rationality”, and the existed practices should be regarded as usual trade practices e.g. Entrance Fee, Delist, House Brand etc.

Summary

8. It is certain that modern retail businesses introduce more efficiency in distribution networks which are directly beneficial to the consumer. The wholesale and retail businesses in Thailand have a large market volume businesses which have direct and indirect impact on employment in supply chain. At the same time they are mostly small and medium businesses, which are the foundation of economic and have important role in the growth of GDP of the country.

9. The objective of setting the guideline for consideration of unfair trade practices in wholesale and retail businesses are to supervise the fair competition in wholesale and retail businesses, to prevent wholesale and retail business operators from using their market status to carry out any action which is not fair to their trade partners. This will be the development of trade competition to be beneficial to economic of the country. It is common practice of most countries. Recently is the period for public hearing from relevant sectors, which can be regarded as the transparency of law enforcement. So that, the setting of the guideline for consideration of unfair trade practices in wholesale and retail businesses will be base on the benefits of Thai economy as a whole.

NOTE

- ¹ This contribution was prepared by Ms. Prattana Hasamin, Director of Foreign Affairs Units, the Trade Competition Bureau, Thailand.