

Unclassified

CCNM/GF/COMP/WD(2002)10



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

05-Feb-2002

English text only

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

CCNM/GF/COMP/WD(2002)10
Unclassified

OECD Global Forum on Competition

CONTRIBUTION FROM THAILAND

This note is submitted by Thailand as a background material for the second meeting of the Global Forum on Competition, to be held on 14-15 February 2002.

JT00120338

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English text only

THE THAILAND TRADE COMPETITION ACT AND INTERNATIONAL COOPERATION

1. Competition Policy

Globalization has impelled world economies to be more connected. The movement of production factors and investments all over the world can be done more rapidly and conveniently. This will result in severe competition in the world market.

Under open economy and liberalization, the investment of transnational enterprises will make a contribution to a host country in terms of new technology and know-how. This will be beneficial for its structural improvement and production efficiency for its competitiveness. On the other hand there is the possible danger that those transnational enterprises may exercise their market power in an abusive way which may cause damage to small and medium-size enterprises and the competition within the country. The rigorous competition law and policy is therefore indispensable to control and maintain competition.

Thailand fully realised the importance of having a strong and effective competition policy. It is stated in Article 87 of the Constitution of the Kingdom of Thailand that the government is to support an economic system under a free market system. It has to regulate in order to have fair competition, consumer protection and anti-monopoly controls through direct and indirect means. The Ministry of Commerce which is directly responsible for national trade and competition has defined its vision to promote free and fair trade in order for there to be an efficient market mechanism, to eliminate anti-competitive practices and monopoly, and to protect consumers”.

The Competition Act is one of our tools to achieve the goals of the competition policy. It prohibits 5 types of the practices which are the abuse of dominant position, mergers that may result in monopoly, concerted acts that may amount to monopoly, reduction and restriction of competition, the restriction of opportunities for consumers to purchase goods or services directly from business operators outside the Kingdom, and unfair trade practices that may result in destroying, impairing, obstructing or impeding other business operators.

2. Thailand and its position about competition policy under international forums

The international trading system has changed, countries have entered into bilateral, multilateral as well as regional agreements for international trade. This is done for their mutual benefits.

With respect to international forums, Thailand established a sub-committee on competition policy to consider any issue related to competition policy and prepare the positions of Thailand for negotiations under WTO forums. The resolution of which the sub-committee provided as the position of Thailand for the Ministerial Conference at Doha was that we agreed for the negotiations to be taking place. However, the issue of enhancing support for technical assistance and capacity building in this area to developing countries is required. The reason that we agreed to the negotiations is that increasing effects of international cartels and transnational mergers on global, and in particular, to small countries such as Thailand who are price takers and have limited power in the international market, the possibility for them to establish cartels are rare compared to big enterprises of developed countries. There is sufficient evidence to indicated that this kind of cartel will cause developing countries to buy goods and services at a higher price.

3. International Cooperation

Countries became increasingly concerned and realized about the possible effect of international cartels and transnational mergers. Without proper and effective enforcement of the competition Act, it may cause damage to the world economy. In order to deal with these practices, national action was not sufficient and needed to be complemented by international cooperation.

Organizing international conferences/seminars is one way to foster understanding and cooperation in gathering information, investigating and proceedings among competition authorities. In particular, competition authorities of developed countries with long-time experiences in the competition field will be able to share their knowledge and experiences with developing countries which are in the beginning stage of implementing the Competition Act.

For Thailand, we were a co-initiator in organizing a five-year Partner for Progress (PFP) project on competition policy for member countries of the APEC with the financial support from Japan. It was quite a successful project as there were many countries requested for organizing such a project. We have also planned for another project of the same kind with Japan and the proposal is now in the process of being submitted to the APEC Ministerial Meeting. Thailand has not only organized international seminars, but has also attended various international conferences/seminars on competition policy and law in order to gain information and knowledge as well as the experiences shared by other countries. For example, we recently attended a seminar organized by OECD and Chinese Taipei Fair Trade Commission on competition policy and law issues for Southeast Asia countries in Phuket, Thailand.

4. Conclusion

International cartels and transnational mergers are having disastrous effects on economies, in particular small countries which are at a disadvantage because of their limited bargaining power. One possible method is to seriously establish a regional or global resource network which would focus on competition and consumer protection issues.

This should be done for the following purpose, firstly, better information to solve the lack of sufficient information such as improved access to information, facilitating exchange of information, improved dissemination of information. Secondly, Technical assistance from developed competition countries to less developed competition countries such as training program, short-term consultancies, staff exchange programs. And finally, further co-operation which means cooperation between member economies will be facilitated by the resource network such as formation of a participant's network and development of bilateral or multilateral co-operation arrangement. It will be very beneficial for member economies to efficiently deal with international cartels and transnational mergers.

QUESTIONNAIRE ON TECHNICAL ASSISTANCE EXPERIENCES AND NEEDS

1. It would be useful if you could provide as much as reasonable possible of the data and information requested in the attached table on technical assistance your authority has received in 2000-001 and is expecting to receive in 2002. More important than this quantitative data, however, are you views on the issue raised below.

Answer We received technical assistance from the World Bank in 1999 to draft guidelines of the Competition Act. However, the drafted guidelines did not conform to the business culture of Thailand, thus it had to be adjusted. To perform this task based on the drafted one, the Department of Internal Trade (DIT) has been consulting with professors from academic communities concern.

In year 2000-001, we did not receive any assistance from any other source. With our limited resources, the DIT adopted several projects related to the competition issues, for example, advisors, the study of anti-competitive practices of other countries in order to adopt guidelines of unfair trade practices (Article 29) of the Competition Act, and the survey of business practices in industries which are suspected to have anti-competitive practices.

For year 2002, we have a project to acquaint our staffs most aspects of the competition by a professional in this field.

2. Based on your experiences :

- What topic have been most and least useful, and why?

Answer Every topic is very interesting and useful for us because we are only now starting to learn about competition issues. In particular, the concerted acts to fix prices of goods and services by transnational enterprises, especially the hard core cartels that damage the consumer interests in many countries. It is a topic that is always being raised in the negotiation forums of the WTO. We have therefore prepared ourselves in respect of these issues for the new round of the negotiations.

- What kind of assistance (conference, seminar, advisor, internship) have been most/least useful, and why?

Answer The internship is the most useful and important assistance for us now because we can practice and learn how to solve problems that may occur in reality when dealing with the anti-competitive practices. The second important assistance is the conferences/seminars and advisors.

- What are the advantages and disadvantages of single-country or regional events? Does this answer depend on the topic being covered? Please explain.

Answer Single-country events are advantageous because they will enable us to have a detailed discussion about the problems that incurred in implementing the competition law and how to solve those problems. However, regional events will be the advantageous in the respect that we can learn and share experiences with countries in a similar position in the same region. However, it also depends on the topic to be covered in the events and the contributions that are made by all the participants.

- Besides knowledge of competition law and policy, what skills and experience do you think are required or important for an assistance provider? How do you rank the following?
 - Experience working in a competition authority?
 - Experience in providing assistance to transition or developing economies?
 - Knowledge of competition law and policy system in different parts of the world?
 - Detailed knowledge of your actual legal, institutional, and economic systems?

Answer The following is the ranking of skills and experiences that are required by an assistance provider.

1. Experience working in a competition authority is required by an assistance provider. With the said experience, the provider will be able to deal with a particular anti-competitive practice, if it occurs, and be able to solve any related problems that may arise when put into the practice.
 2. Detailed knowledge of our actual legal, institutional, and economic systems is needed by the assistance provider to enable them to adapt their knowledge and experience to correspond with the situation in our country.
 3. Experience in providing assistance to transition or developing economies will be beneficial in that the assistance provider will clearly see the problems that the country faces and be able to adopt a particular means which is suitable for that country to solve those problems.
 4. Knowledge of competition law and policy system in different parts of the world will also be useful since we are not alone in this world and as it is the liberalization era, we have to deal with trade and investment of many countries. Knowing about the competition law and policy systems in those countries will be helpful.
- What are the advantages and disadvantages of receiving assistance from current competition officials and private consultants (including consulting firms, law firms, professors, etc.)? Does the answer depend on the topic being covered? Please explain.

Answer The topic which is the most advantageous to us is the methodology to investigate on identify the violation cases such as tie-in sales, price discrimination, predatory pricing etc.

3. Have there been instances when an apparent lack of co-ordination among providers has been a problem for you? Also, please provide any comments you have on advantages or disadvantages to greater international co-ordination of technical assistance programs?

Answer We received technical assistance from the World Bank a few years ago to draft guidelines for implementing our Competition Act. The problem that we faced was the difference in business culture, ways of life, concept of the Act, etc. that caused the misunderstanding when drafting the guidelines. It needs to be adjusted to correspond with the situation in Thailand. Furthermore, the consultants always have their own scope of work and they will not provide any other assistance beyond their own scope. This is one of the limitations of the assistance.

4. What do you currently consider your economy's greatest need in terms of competition law and policy assistance?

- Drafting a competition law? Drafting secondary legislation/regulations?
- Implementing a competition law?
 - Against abuse of dominance by natural monopolies?
 - Against abuses of dominance by “unnatural” monopolies?
 - Against cartels?
 - Against anti-competitive mergers?

Answer We need the assistance in implementing a competition law under all of the above topics.

- If assistance in implementation is the need, what kind of assistance would be most valuable?
Establishing procedures, training staff, other?

Answer Internship is the most valuable for us because we can learn by practising.

5. Please provide any other information or comments you wish to contribute.

Answer Thailand is a developing country and it has just enacted the Competition Act. What we need is assistance from other countries in any form, either technical assistance or financial assistance for developing and carrying out the task of implementing the competition Act. We believed, that with the said assistance, the enforcement of the Competition Act will be more efficient.