OECD Global Forum on Competition

CONTRIBUTION FROM THAILAND

This contribution was submitted by Thailand as a background material for the first meeting of the Global Forum on Competition to be held on 17 and 18 October 2001.
1. Background

The Thailand Trade Competition Act (hereafter called “the Competition Act”) began with the enactment of the Price Fixing and Anti-Monopoly Act of 1979. The 1979 Act consists of two parts. The price fixing part and the anti-monopoly part. The anti-monopoly part of the 1979 Act is aimed at promoting fair competition. It empowers the Central Committee to look after business structures that may create monopoly and conduct restrictive business practices. But since it created problems for enforcement, the Department of Internal Trade, which is in charged of the said Act, made an adjustment to the Act by separating it into 2 Acts: The Price of Goods and Services Act and the Competition Act. The Competition Act came into effect on April 30, 1999.

2. Objective of the Act

Its objective is to promote fair and free trade with competitive environment. Its principle is mainly to look after business operations.

3. Scope of the Act

The Act applies to all types of business operations except those of central, provincial, and local administration; state enterprises under the law on budgetary procedure; group of farmers, co-operatives or co-operative societies recognised by law that their businesses are operated for the benefit of the farmers; and businesses prescribed under the Ministerial Regulation.

4. Enforcement Body

The “Competition Commission” (hereafter called “the Commission”) which consists of the Minister of Commerce as Chairman, the Permanent-Secretary of the Ministry of Commerce as Vice-Chairman, the Director-General of the Department of Internal Trade as Member and Secretary, and the Permanent-Secretary of the Ministry of Finance, and no more than twelve other qualified persons as members shall be responsible for the enforcement of the Act. These qualified persons appointed as members must not be political members, holders of political positions, executive members or holders of positions with the responsibilities in the administration of political parties. They shall hold office for a term of two years and not more than two consecutive terms in case they are re-appointed. The Commission shall have the powers and duties to consider complaints, to prescribe rules for dominant position, to consider an application for permission to merge business, or to initiate the joint reduction or restriction of competition to give orders for suspension, cessation, correction, or variation of activities by business operations.

The Office of the Commission was established in the Department of Internal Trade, Ministry of Commerce, with the Director-General of the Department as the Secretary who is responsible for the official affairs of the office.
5. **Anti-Competitive Behaviours under the Act**

Anti-competitive behaviors under the Act have been defined and divided into categories as followings.

1. **Section 25** prohibits business with dominant position and their ability to abuse their market power by:
   1) setting unfair prices for goods and services;
   2) setting unfair trading conditions, directly or indirectly, to customers in order to restrict customers' normal business practices;
   3) limiting supply of goods and services to create a shortage of supply; and
   4) intervening in other business without proper reasons.

   A business operator with market domination is defined under the Competition Act as one or more business operators in the market of any goods or services who have the market share and sales volume above the level that is prescribed by the Commission.

2. **Section 26** states that any merger that may create monopolistic power or reduce competition are prohibited, unless the merger get permission from the Commission in the case that it is necessary in the business and beneficial to the economy.

3. **Section 27** prohibits a business operator from conspiring, colluding or collaborating with another business operator in order to create monopolistic power, or reduce competition. In the case where it is reasonably necessary in the business and has no serious harm to the economy, the business operators shall submit an application for permission to the Commission. The Commission has already approved forms, rules and procedures to apply for permission of any kinds of anti-competitive agreements.

4. **Section 28** of the Act deals with agreements between domestic and oversea business operators performing an activity which will restrict the freedom or opportunity of a person residing in the Kingdom from purchasing goods or services for his/her own use directly from business operators outside the Kingdom.

5. **Section 29** of the Act also prohibit a business operator from performing any act which is not free and fair competition and which results in destroying, impairing, obstructing or impeding or restricting business operation of other business operators or preventing other persons from carrying out business or causing the cessation of business.

6. **Penalties**

Failure to abide by the above provisions of the Competition Act could result in jail terms of between one to three years and/or fines ranging from two to six million baht. Note that under the Act, such penalties may be applied not only to the enterprises but also to their managing partner or person in charge of operations unless the offence at stake was committed without his/her knowledge or consent and/or reasonable measures were taken to prevent such offence.

Furthermore, the Act also allows any person suffering damages attributable to violation of Section 25 to 29 to claim for damages by filling a lawsuit through the Consumer Protection Commission.
7. Recent Cases

It has been about 2 years since the enactment of the Competition Act in April 30, 1999. There were many interesting cases come into the Office which can be divided into 3 categories.

1. Cases in which the Commission has made decision

1.1) Tying sale of whisky and beer

Tying sale of whisky and beer by a big brewery producer which occurred at sub-agent and wholesale level. The unreasonably fixing compulsory conditions requiring its customers to restrict purchase of beer by a business operator impeded competition in whisky and beer market. The Commission could not find marked evidence that the said entrepreneur had any anti-competitive behaviors that are in violation of the Competition Act. Then the Commission ordered the Secretariat:

– To inform sub-agents that the tying sales of beer was an inappropriate behavior and may breach the Competition Act so the beer producer should cease that behavior.

– To monitor the movement of whisky and beer producers in particular and report to the Commission periodically.

1.2) Cable Television Monopoly

The merger of the two cable television companies which became the sole business operator in Cable Television Business and gain 100% market share. The merged company raised fee of service packages and reduced the number of programs. The company’s reason for doing so is its financial problems due to Baht depreciation and the company is still in loss after the merger.

Since the adjustment of service packages and monthly fee is under the approval of the Mass Communication Organization of Thailand (MCOT) which is the Concession Grantor. The Commission ordered the Secretariat to study the contract between the merged company and MCOT whether the merged company is a state-own enterprise as well as asking MCOT to monitor the company’s fee of service packages and the number of packages in order to provide more alternatives to consumers. In this case, if the operation of the merged company is that of a state-own enterprise, it will be excepted according to the Competition Act.

2. Cases that are terminated due to a mutually acceptable settlement of the dispute

2.1) A non-competitive clause in a re-new international franchise agreement between a franchiser and a particular franchisee of a famous fast food restaurant business in Thailand. The terms and conditions of the domestic form are different from those of international form. The franchisee claimed that the franchiser's use of different forms for domestic and international franchisees constitutes discrimination which may violate the Competition Act. Eventually, both parties had jointly agreed on mutually acceptable settlement of their dispute for their own benefit.

2.2) A sole licensed importer of video movies in Thailand was forced by a videotape-rental franchisee not to sell video movies to a particular videotape-rental company. This caused the company to be unable to provide video movies to its customers and its revenue decreased by a
significant amount each month. The case is terminated because the company is out of business for some reason.

2.3) A concerted action between the nation’s largest producer and supplier of day-old chicks, live birds, and fresh chicken eggs and its affiliated companies to determine the quantity of production and distribution of the said products. They also fixed compulsory conditions to small producers to buy livestock feed together with live birds or day-old chicks as well as controlled selling price of fresh chicken eggs below market price. Finally, both parties had jointly agreed on mutually acceptable settlement of their dispute.

3. Cases that are in process

3.1) Tying sale of drinking water, white whisky and beer occurred at sub-agent level. This means wholesalers have to buy white whisky together with beer or drinking water from sub-agent whereas retailers are able to buy separately and buy drinking water at low price. This causes retailers to prefer this particular brand of drinking water due to its low price compared to others. This is an anti-competitive behaviour and may restrict competition in drinking water market.

3.2) An anti-competitive behaviour of a big importer of scrubbing patches. The company has market power in the scrubbing patch market. It sold the imported product at a very low price together with a give-away but this was done in a short time. However, this created barrier to entry for other proposed competitors and may violate the Competition Act.

8. Related Problems

The Competition Act is a new act to control unfair trade practices that may result in monopoly or restrictive competition in relevant market. In this regard, we realised that the effective implementation and vigorous enforcement of this law is critical. However, there are some obstacles to reach the objectives.

1. Unfamiliarity with the Act

Since the Act is quite a new law in Thailand, it caused difficulties, in the very first year, for operational staffs to have a deep understanding about the context of Act. However, the Department of Internal Trade is well realised this problem and provides several training and seminars for them.

2. Misunderstanding of the Act

In order for the Act to be fully effective, it is necessary for related parties to have the same understanding about the Act, thus public dissemination is required. This can be done by a series of public information-education seminars, workshops and conferences for the general public, leading government authorities, representatives of the main business association and leading legal-economic professional communities in the capital and major regional center. Eventually, it will result in voluntary compliance of the Act.
9. Conclusion

The Competition Act is an important economic law to monitor business practices. It is believed that fair competition will bring about the development in production and economy as a whole. It is impossible to say that no problems will arise on the implementation of the Competition Act. We have to accept any problem that may incur and do our best for that.