

Thailand to Overhaul Trade Competition Law

Criticised for being ineffective, the Trade Competition Act B.E. 2542 of Thailand (“Trade Competition Law”) is facing an overhaul. The law regulates trade by restricting monopolistic and unfair trade practices in Thailand to level the playing field for all business players - large, medium and small - for the benefit of free and fair competition in the market. The Ministry of Commerce is expected to propose amendments to the Cabinet before May 2010.

The Trade Competition Law

The Trade Competition Law, in force for more than a decade, is facing an overhaul. Promulgated on 30 April 1999, the Trade Competition Law replaced the Price Fixing and Anti-Monopoly Act of 1979.

The Trade Competition Law seeks to promote free and fair trade competition and restrict any trade practice which creates a monopoly or reduces or restricts competition. The following anti-competitive trade practices are prohibited under the Trade Competition Law:

- Abuse of market dominance
- Mergers causing monopolies/unfair competition
- Collusive practices creating monopolies/reduction of competition
- Agreements restricting purchase of goods or services directly from overseas
- Unfair trade practices

A business operator who fails to comply with the provisions of the Trade Competition Law could be subject to imprisonment for a period of 1 to 3 years and/or a fine ranging from THB 2 to THB 6 million

The Trade Competition Law applies to all business

operators, including manufacturers, sellers, importers and buyers. It does not apply to government sectors, state enterprises, agriculturalists/cooperatives or other businesses exempted by law.

The Trade Competition Law is enforced by the Trade Competition Commission (the “Commission”), which consists of the Minister of Commerce, the Permanent-Secretary of the Ministry of Commerce, the Director-General of the Department of Internal Trade, the Permanent-Secretary of the Ministry of Finance and between 8 to 12 “qualified persons with knowledge and experience in law, economics, commerce, business administration or public administration.” The Commission is empowered to do the following: consider complaints; prescribe rules for business operators with a market dominant position; consider applications for business mergers; initiate the joint reduction or restriction of competition and give orders for suspension, cessation, correction or variation of activities by business operators.

No trade for the Trade Competition Law

The Trade Competition Law is widely seen as playing no role and having no impact on the trade practices of business operators. It fails to influence overall competition in the domestic market. Business operators do not fear committing any prohibited trade practice proscribed by the Trade Competition Law.

The law’s ineffectiveness was attributed to several causes, such as:

1. Lack of due process and transparency in administering and enforcing the law
2. Broad discretionary authority of the Commission

3. Lack of clear rules or guidelines for implementation
4. Ineffective structure and composition of the Commission, which contributes to its lack of independence.

The Proposal

The Minister of Commerce, Pornthiva Nakasai, has taken the first step in amending the Trade Competition Law by assigning the Department of Internal Trade to study and examine the Trade Competition Law. The Department of Internal Trade will prepare a proposal to reform the law (“Proposal”) to be presented by May 2010 to the Cabinet for its consideration.

The Proposal aims to rectify or eliminate several issues which are considered obstacles in enforcing the Trade Competition Law. It is anticipated to focus on:

1. Changing the structure and composition of the Commission by including representatives from public or consumer organisations to solve the conflict of interest issue
2. Upgrading the status of the Office of Trade Commission to an independent body
3. Increasing transparency in administering and enforcing the law
4. Strengthening the penalties imposed on business operators who violate the law
5. Creating fair competition between state-owned enterprises and the private sector by expanding the scope of the law to apply to state-owned

enterprises operating businesses that compete with the private sector

In addition, concerned parties are advocating the need to establish guidelines and definitions of technical terms specified in the Trade Competition Law, such as merger, market dominance, monopoly and price discrimination.

Conclusion

The Proposal is poised to face strong opposition from parties whose interests it will adversely affect. However, the overhaul of the law is essential for the lofty objective of the law - free and fair trade - to be raised from paper to practice.

Competition should be defined and re-defined to adapt to changing economic and business climates. This will ensure the benefits of competition are not hampered by any anti-competitive activity.

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