

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Unfair Trade Practices
Resulting in Damage to Other Undertakings**

Since the Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018), dated 4 October B.E. 2561 (2018), in which serving as a basis to assess any action that may render harmful to other undertakings per Section 57 of the Trade Competition Act B.E. 2560 (2017) has been effective for a while and the pattern of doing business as well as the overall economic conditions have been changed significantly.

By the virtue under Section 17 (3) of the Trade Competition Act B.E. 2560 (2017), the Trade Competition Commission, as deemed appropriate to determine guidelines for the assessment of harmful practices anew, hereby issues the Notice as follows:

Article 1: This Notice shall be effective on the following day after the day that this Notice being published in the Government Gazette onwards.

Article 2: The Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018), dated 4 October B.E. 2561 (2018), shall be annulled.

Article 3: The Chairperson of the Trade Competition Commission shall be in charge of this Notice.

Chapter 1
General Provision

Article 4: Trade practices among business undertakings shall be on a basis of free and fair trade and shall not inflict any harm to other undertakings which are unfairly restricting other undertakings' businesses, unfairly exercising market power or superior bargaining power, imposing restrictive or obstructive trading conditions on others' business doing unfairly, and committing any other action determined by the Notice of the Trade Competition Commission under Section 57.

Article 5: An offence under the provision of Section 57 shall inflict a loss to another undertaking whereby such loss shall be assessed from apparent and factual economic loss, such

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as revenue loss of an undertaking, loss in market value or market share of a product or service, and loss of opportunity in producing, buying, or selling goods or service, an increase in costs or expenses, or loss of opportunity to do business with other undertakings.

Article 6: Market power shall be assessed from an ability of an undertaking to determine price, quantity, or trading terms and conditions in a market; it shall be presumed that an undertaking with a market share of 10 percent or higher is deemed to have market power and shall consider other additional factors concurrently; such as a number of undertakings in a market, registered capital, access to essential factors of productions, distribution channels, business networks, necessary infrastructure for doing business, and laws and regulations.

Article 7: Superior bargaining power shall be assessed from an ability of an undertaking to control, instruct, determine the direction or terms and condition of doing business with another undertaking whereby the latter undertaking is implicitly acquiescent, having one or more of the following features:

(1) An undertaking has to rely on doing business with another undertaking with superior bargaining power whereby the value of transaction – buying or selling of goods or service – between these two undertakings is 30 percent or higher of the revenue of the one with lesser bargaining power;

(2) An undertaking has to rely on doing business with another undertaking with superior bargaining power whereby the value of transaction – buying or selling of goods or service – between these two undertakings is 10 percent or higher but less than 30 percent of the revenue of the one with lesser bargaining power and having one or more of the following features:

(a) The undertaking with lesser bargaining power is unable to find, or have no, alternative trade partner;

(b) Dealing with an alternative trade partner may incur significant operating expenses exceeding benefits from dealing with an existing trade partner.

Article 8: To assess a certain action whether it is unfair or unreasonable, the following criteria shall be considered concurrently:

(1) Such action has no justifiable explanation(s) from the perspective of economics, business, or marketing;

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- (2) Such action is not commonly practiced as trade norms;
- (3) There is an imposition of condition(s) without written evidence and without prior notice in a reasonable period of time as normally practiced in such trade;
- (4) Other relevant factors.

Chapter 2

Offences

Article 9: An unfair restriction of other undertakings' business doing has one or more of the following features:

- (1) Price determination in a purchase or a sale of goods or service in such a way that the price is excessive, or below costs, or discriminatory without due cause; for instance, set an unfairly high purchasing price preventing other undertakings from purchasing goods or service, sale of goods or service at a price below costs causing other undertakings unable to sell their goods or service;
- (2) Restriction on own quantity of production, purchase, or sale, of goods or service without due cause; for instance, restricting the quantity to sell goods or service to other undertakings;
- (3) Prevention of other undertakings to buy or sell goods or to provide or being provided service without due cause; for instance, an exclusive dealing agreement that restricting rights of other undertakings in a mandatory manner without due cause;
- (4) Prevention of other undertakings' participation in any society or trade association without due cause;
- (5) Interference of other undertakings' transaction without due cause;
- (6) Interference of other undertaking's internal management without due cause;
- (7) Imposition of any other trade practices in own production, purchase, sale of goods or service, storage of goods, distribution of goods, or any action that has the characteristic of being trade restriction in which is not commonly practiced as a trade norm without due cause.

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Article 10: An unfair exercise of market power or superior bargaining power shall have one or more of the following features:

(1) Requirement for other undertakings to buy or sell other goods or service without due cause; for instance, the requirement for the trading partner to buy goods or service that is not related to goods or service that normally transacted;

(2) Requirement for other undertakings to buy or sell goods or service in the quantity that exceeds or fall short of what is actually needed;

(3) Requirement for other undertakings to acquiescent to terms or conditions differing from what have been agreed upon in the contract without due cause; for instance, purchase price markdown or selling price markup, misrepresenting quality assessment of goods or service;

(4) Requirement for other undertakings to offer trading or other benefits to the undertaking in question or others without due cause; for instance, requirement for trading partner's employees to sell goods that are not related to the trading partner's products without proper remuneration;

(5) Requirement for other undertakings to sell goods or service to meet a sale target without due cause;

(6) Refusal to deal with other undertakings without due cause; for instance, refusal to sell goods or service that are essential to the business of other undertakings;

(7) Any action in which market power or superior bargaining power has been exercised without due cause; for instance, delay of payment for goods or service, refusal to pay fine from excessive delay of payment for goods or service.

Article 11: Unfair imposition of restrictive or obstructive trading conditions shall have one or more of the following features:

(1) Discriminatory trading conditions for different undertakings or in different geographical areas without due cause; for instance, the offer of special discount for one buyer over another in the same area and buying the same quantity of product;

(2) Discriminatory trading conditions favoring some specific undertakings without due cause;

(3) Requirement for other undertakings to buy any other goods or service from the undertaking in question, or from another undertaking, entirely or part thereof, in order to be qualified to buy a desired goods or service from the undertaking in question without due cause;

(4) Delegation of one undertaking to deal with another undertaking without due cause; for instance, the imposition of trading conditions compulsory restricting rights to deal (exclusive dealing) of other undertakings without due cause;

(5) Any other action that imposing restrictive or obstructive trading condition(s) on other undertakings without due cause.

Transitional Chapter

Article 12: All Notices related to the Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018), dated 4 October B.E. 2561 (2018), shall remain effective as long as it is not opposed or contradictory to this Notice;

Any on-going proceeding undertaken by the Trade Competition Commission or the Trade Competition Commission of Thailand on the day prior to the date of this Notice's effectiveness shall be proceeded as described by the Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018), dated 4 October B.E. 2561 (2018), dated 13 August B.E. 2563 (2020), and other related Notices, until it is completed.

This Notice is announced on 29 December B.E. 2564 (2021)

Professor Sakon Varunyuwatana

Chairperson of The Trade Competition Commission

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