

(Translation)

**Outcome of Decision of the Trade Competition Commission
In case of Imposing Conditions for Prohibitions of Cars Sales
and Selling Cross Sales Areas**

	Line Application User Account Name R.	The Complainant
Between	T. Company	The Respondent

Complaint

The Communications Division of the Office of Trade Competition Commission received inquiries from followers of line official account of Office of the Trade Competition Commission, date on November 5, 2019, in case of the respondent had notice to dealers, prescribing as follows "1. Do not sell any models of Hybrid cars and the G. model for taxi services and 2. Do not sell cross the sales areas" This is whether or not a violation of the Trade Competition Act, B.E. 2560.

Facts

The General Fact-Finding Division found the letter of respondent dated on November 1st, 2019, regarding the additional policy of selling the new A. model, which can be concluded that the respondent made an announcement of opening the new A. model, and received good responses from customers including taxi drivers. According to the situation of selling cars at this moment, most operators of taxi services convert Hybrid cars to be taxis. Also, some dealers in the region sell Hybrid cars to taxi drivers cross their sales areas; therefore, to maintain the good image of the products and satisfaction of customers, the respondent additionally adjusted the policy of selling the new A. model to dealers by prohibiting the selling of all model of Hybrid cars and the G. model for taxi services and the selling cross sales areas of dealers. If any dealers violate these policies, the respondent will punish such dealers by suspending the allocation of all A. models in the next month.

/An information...

According to the information of cars registration for taxi services provided on the Department of Land Transport's website, a taxi must have qualities and conditions in accordance with terms and conditions specified by the Department of Land Transport, for example 1. The vehicle shall not have a central lock system, 2. The vehicle shall have and use communication tools, and 3. The vehicle shall have designated signs, such as "TAXI-METER" sign, "Vacant" sign, and "Occupied" sign etc.

Concerning a testimony of the respondent, Mr. K. who is the agent of respondent informed that the respondent operates businesses of manufacturing and selling cars and spare parts. There are two types of selling which are selling through dealers to general customers, government agencies and private organizations, and selling directly to large corporations and embassies etc.

The policy of selling the new A. model of the respondent has a purpose to create the highest satisfaction to customers who are in the target group of driving the new A. model because of its great value, beautiful appearance, excellent efficiency comparing to other cars of different brands in the range of similar price. This model also has an affordable price and can be an option for many groups of customers. Therefore, there are many models that aim to satisfy the demand of different customer groups, including the car's performances which are suitable for the type of usability, the safety of drivers and passengers, and the good image of the drivers. This highest satisfaction will strengthen the trademark of the T. Company in terms of the satisfaction of customers' demand in the target groups by increasing the competitiveness of T. Company's cars with other brands. In this regard, the respondent prohibits the dealers to sell the new A. model especially Hybrid model and the G. model since the survey of customers' satisfaction showed that general customers have no purpose to use their cars as public transports (Taxis). Also, most customers will not buy a popular model which are normally converted into a public transport (taxi) because it will be a negative image of car, and affect the image of customers who buy such model to be their passenger car. The new A. Hybrid model is manufactured to be passenger cars specifically with the certain technology for reducing fuel consumptions, as well as to be eco-friendly car. Also, the engine of Hybrid model is manufactured by certain technologies which are used differently in other new A. models. Hence, this Hybrid model is not suitable for converting into a public transport (taxi) because of its engine and technology features, as well as specific types of usability that exists in only Hybrid model since this model is not manufactured to be used in extreme conditions or to work continuously and constantly. If customers buy this model car and convert it to be a public transport (taxi), they will face problems in using it and encumbering by its high maintenance costs. These will result in negative effects to customers who are operators of taxi services, taxi drivers, and passengers. Especially, operators of taxi services who do not bring

/their cars...

their cars to the respondent's service center, but will bring them to general garages, that may have inadequate technologies or expertise for the maintenance of Hybrid cars because of the cheaper maintenance costs, and this will negatively and inevitably affect the reputations of qualities and capabilities of Hybrid cars. Concerning the G. model, its accessories are designed to have the characteristics of sport cars which are sleek and reflect the modernity of the drivers. There is the image of a racing cars group called "RZ.", and the G. model is named according to the "R" in order to satisfy the need of drivers who are looking for a modern sport car with the driving capabilities and affordable price, as well as to target customers who are teenagers and customers that buy cars with reasons to promote their good images.

However, there are other new A. models which do not prohibit dealers from selling them to operators of taxi services, such as the 1.6 G model for general customers who want a beautiful passenger car, excellent capabilities comparing to other cars of different brands in the range of similar price, as well as for the customers who consider that it is unnecessary and do not want to pay higher price for a car that has modern images of sports cars like the G. model and the L. model, and desire to convert such car to be a public transport (Taxi) specifically. This model was eliminated unnecessary functional equipment or adjusted some of its equipment to be suitable for the effective usability as a public transport (taxi) so that the appearance, operating conditions, and the price of this model are suitable for a car that will be converted into a public transport (taxi).

In setting the price of each models of T. Company, such price shall be considered based on several factors consisting of manufacturing costs, marketing costs, and the good image of the car with the purposes of satisfying the needs of various groups of customers, avoiding the issues of inappropriately usability, and the safety of the drivers and passengers. In this regard, the respondent has set an appropriate policy in which the dealers are prohibited to sell the new A. Hybrid model and the G. model to the operators of taxi services. The respondent's policy aims to create the highest satisfaction of the customers who are in the target group of the new A. Hybrid model and G. model. This will strengthen the trademark of T. Company in terms of satisfying the needs of customers in the target group, and will enhance the competitiveness of cars of T. Company among other cars of different brands, as well as will increase choices to customers in all target groups. Hence, the respondent believes good faith that maintaining good images of the cars by prohibiting dealers to sell the new A. Hybrid model and the G. model to operators of taxi services does not create an adverse effect on competition. Also, the prevention of inappropriately usability and the maintaining of brand image are in accordance with international practices, and do not cause any damages to dealers because this is not forbidden them to sell other suitable cars in terms of capability and price to operators of taxi services, such as the L. model.

/This policy ...

This policy is designed for all dealers in the country, and the respondent does not have any policy of selling the new A. Hybrid model and the G. model to operators of taxi services. Additionally, the new A. Hybrid model and the G. model are more expensive than the L. model at approximately thirty percent and twenty percent respectively; therefore, the policy does not cause damages to the dealers since operators of taxi services will buy the L. model for converting into a taxi because of this higher price issue.

Regarding the prohibition of selling cross the sales areas, the respondent sets this policy to promote the competition of inter-brand by prohibiting activities or advertisements of cross sales areas only, excluding the case that customers who are not in the sales areas directly contact and buy the car from the dealers. This means that if customers who are not in the sales areas directly contact dealers to buy their cars, such dealers are able to sell cars to the customers. This policy will also increase the sales volume of the dealers in each sales areas to reach the level that such dealers can provide effective after-sales services to their customers and allow the customers to enjoy the convenience of accessing to high-quality services from dealers of T. Company located across the country. This can say shortly that the policy aims to reduce the competition in terms of more expensive costs in the same brand, and to increase the competition in terms of the high-quality services to customers. Also, after-sales service is one of the conditions for evaluating dealers' qualifications for the renewal of the contract with the respondent. However, the respondent has not received any complaint on such unfair policy and measure from the dealers, and the respondent has never punished any dealer for failing to comply with this policy.

Issues of Decision

In this case, there are the issues of decision as follows:

1. It is whether or not the respondent's action in prohibiting dealers to sell the All New Corolla Altis Hybrid model and the GR Sport model to operators of taxi services, considered as the conduct which is prohibited under the Trade Competition Act B.E. 2560, Section 55 (4).
2. It is whether or not the respondent's action in prohibiting dealers from selling cars cross sales areas, considered as the conduct which is prohibited under the Trade Competition Act B.E. 2560, Section 57 (3).

/Decision...

Decision

The first issue for the consideration is that whether or not the respondent's action in prohibiting dealers to sell the new A. Hybrid model and the G. model to operators of taxi services, considered as prohibited actions under the Trade Competition Act B.E. 2560, Section 55 (4).

Section 55 of the Trade Competition Act, B.E. 2560 prescribes that business operators shall not jointly undertake conduct which monopolizes, reduces or restricts competition in a market in one of the following ways: (1) to establish conditions referred to under Section 54 (1) , (2) , or (4) among business operators which are not competitors in the same market; (2) to reduce the quality of goods or services to a condition lower than that previously produced, sold, or provided; (3) to appoint or assign any one person to exclusively sell the same goods or provide the same services, or of the same type; (4) to set conditions or practices for purchasing or producing goods or services so that the practice follows what is agreed; (5) to enter joint agreements in other manners as prescribed in the Commission's notification, and section 56 of the Trade Competition Act, B.E. 2560 provides that the provisions under Section 55 shall not apply to one of the following situations, where: (1) ... (2) (3) the joint agreement is in the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted rights, with a duty to pay charges, fees, or other remunerations for the rights granted. According the fact and evidence gathered by the General Fact-finding Division, the respondent operates businesses of wholesaling cars and spare parts in the country, as well as exporting the products to other countries. Regarding the domestic sales, there are two types which are consisting of selling through dealers for general customers, government agencies, private sector, and selling directly to customers which are large corporates and embassies etc. This can be considered that the respondent operates businesses as a manufacturer for selling T. Company's cars and the respondent's dealers are dealers of T. Company; therefore, the respondent and the respondent's dealers are business operators in accordance with the definition of "business operators" under section 5 of the Trade Competition Act B.E. 2560. Furthermore, the fact was shown that the respondent had a letter, dated on November 1, 2019 regarding the policy of selling the new A. model (additional) to dealers stating that "all models of Hybrid cars and the G. model are prohibited to sell for taxi services (additional)" and the respondent's dealers has complied with such prohibition stated in the letter. In this case, business operators jointly undertake conduct pursuant to section 55 first paragraph of the Trade Competition Act, B.E. 2560.

/the next issue...

The next issue for the consideration is that whether or not the agreement between the respondent and dealers according to the letter of the respondent mentioned above is a conduct which monopolizes, reduces or restricts competition in a market by setting conditions or practices for purchasing or producing goods or services so that the practice follows what is agreed under section 55 (4) of the Trade Competition Act, B.E. 2560. In this issue, a letter of the respondent provided the fact that the respondent asked all dealers for the cooperation on the prohibition of selling all models of Hybrid cars and the G. model for taxi services. Although, this can be considered that the respondent imposes the conditions or practices of prohibiting the sale of the new A. Hybrid model and the G. model for taxi services to all dealers to comply with it, the General Fact-finding Division found that cars of T. Company of the respondent have several models, and each model is specifically designed by the considerations of value, affordable price, beautiful appearance, and excellent efficiency comparing to other cars of different brands in the range of similar price, as well as to satisfy the demand of various groups of customers in terms of the suitable capability for different types of usability, safety of drivers and passengers, and the good image of the drivers. These will increase the competitiveness of cars of T. Company among other brands. The respondent also conducted the survey of customers' satisfaction, and found that general customers did not intend to use their cars as taxis, and did not want to buy a popular model which will normally be converted into a public transport (taxi) because the negative image of cars may affect the image of customers who buy such model to be their passenger cars. Especially, the new A. Hybrid model is manufactured to be passenger cars specifically with the particular technology for reducing fuel consumptions, as well as to be eco-friendly car. Also, the engine of Hybrid model is manufactured by certain technologies which are differently used in other A. models; hence, this Hybrid model is not suitable for converting into a public transport (taxi) because of its engine and technology features, as well as specific types of usability that exists in only the Hybrid model since this model is not manufactured to be used in extreme conditions or to work continuously and constantly. If customers buy this model and convert it to be a public transport (taxi), they will face problems in using it and encumbering by its high maintenance costs. These will result in negative effects to customers who are operators of taxi garages, taxi drivers, and passengers. Especially, for operators of taxi services who do not bring their cars to the respondent's service center, but will bring them to general garages, which may have inadequate technologies or expertise for the maintenance of Hybrid cars because of the cheaper maintenance costs, and this will negatively and inevitably affect the reputations of qualities and capabilities of Hybrid cars. Concerning the G. model, its accessories are designed to have characteristics of sport cars which are sleek

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and reflect the modernity of the drivers. There is the image of a racing cars group called “RZ.”, and the G. model is named according to the “R” in order to satisfy the need of drivers who are looking for a modern sport with the driving capabilities and affordable price, as well as to target customers who are teenagers and customers that buy cars with reasons to promote their good images. However, there are other new A. models in which the respondent does not prohibit dealers from selling them to operators of taxi services, namely the 1.6 G model for general customers who want beautiful passenger cars, excellent capabilities comparing to other cars of different brands in the range of similar price, as well as for the customers who consider that it is unnecessary and do not want to pay higher price for a car that has modern images of sports cars like the G. model and the L. model, and desire to convert such car to be a public transport (Taxi) specifically. This model was eliminated unnecessary functional equipment or adjusted some of its equipment to be suitable for the effective usability as a public transport (taxi) so that the appearance, operating conditions, and the price of this model are suitable for the car to be converted into a public transport (taxi). The policy of the respondent aims to create the highest satisfaction of the customers who are in the target group of the new A. Hybrid model and the G. model. This will strengthen the trademark of T. Company in terms of satisfying the needs of customers in the target group, and will enhance the competitiveness of T. Company’s cars among other cars of different brands cars, as well as will increase choices to customers in all target groups

The Trade Competition Commission considered that although the behavior of the respondent and its dealers is a joint conduct between the business operators who set conditions or practices for purchasing Hybrid cars and the G. model of T. Company, such conduct has main purpose of product positioning in order to maintain the good image of products, as well as to create the satisfaction of customers in target groups of the respondent. Also, it does not have effects of monopoly or reduce or restrict competition to any market. Therefore, the respondent does not violate section 55 (4) of the Trade Competition Act B.E. 2560.

Furthermore, the Trade Competition Commission considered that whether or not the prohibited conducts under section 55 of the Trade Competition Act, B.E. 2560, apply to the case of the respondent, and is of the opinion based on the fact that the respondent and the dealers engaged in a joint agreement which is the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted; therefore, this can be considered as a relation of agreement according to section 56 (3) of the Trade Competition Act, B.E. 2560 prescribing that the provisions under section 55 shall not apply to one of situations which mentioned in section 56. Therefore,

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the case of the respondent which is a joint conduct is in the pattern of contracts between the respondent and the dealers in accordance with section 56 (3), and the provisions under section 55 of the Trade Competition Act B.E. 2560 shall not apply to contracts of the dealers' respondent in this case.

The next issue for the consideration is that whether or not the respondent's action of restricting dealers to sell cars cross sales areas is a prohibit action according to the Trade Competition Act B.E. 2560.

Pursuant to section 57 of the Trade Competition Act B.E. 2560, no business operator shall undertake any conduct resulting in damage on other business operators in one of the following ways: (1) by unfairly obstructing the business operation of other business operators; (2) by unfairly utilizing superior market power or superior bargaining power; (3) by unfairly setting trading conditions that restrict or prevent the business operation of others; and (4) by conduct in other ways prescribed in the Commission's notification, and according to the fact and evidence gathered by the General Fact-finding Division, the respondent set this policy to promote the competition of inter-brand by prohibiting activities or advertisements of selling cross sales areas only, excluding the case that customers who are not in the sales areas directly contact and buy the car from the dealers. This means that if customers who are not in the sales areas directly contact dealers to buy their cars, such dealers are able to sell cars to the customers. This policy will also increase the sales volume of the dealers in each sales areas to reach the level that such dealers can provide efficient after-sales services to their customers and allow the customers to enjoy the convenience of accessing to high-quality services from Toyota dealers which are located in every area. This can say in short that the policy aims to reduce the competition in terms of more expensive costs in the same brand, and to increase the competition in terms of the high-quality services to customers, and after-sales service is one of the conditions for evaluating dealers' qualifications for the renewal of the contract with the respondent. However, the respondent has not received any complaint on such unfair policy and measure from the dealers. Also, the respondent has never punished any dealer for failing to comply with this policy.

The Trade Competition Commission considers this issued, and is of the opinion that the policy of the respondent specifically prohibits the dealers to conduct activities, as well as advertisements of selling cross the sales areas. if customers who are not in the sales areas directly contact dealers to buy their cars, such dealers are able to sell cars to the customers. This policy will increase the sales volume of the dealers in each sales areas to reach the level that such dealers can provide efficient after-sales services to their customers and allow the customers to enjoy the convenience of accessing to high-quality services

/from dealers...

from dealers of T. Company which are located across the country. The respondent also considered that after-sales service is one of the conditions for evaluating dealers' qualifications for the renewal of the contract with the respondent. Furthermore, the fact was not shown that the respondent's policy causes damage to the dealers or customers, and the respondent has not renewed the contract with any dealers, because they did not pass evaluation criterion. In the case that they do not pass the assessment, the respondent will send a team called rescue team to help planning the dealers' operations together with such dealers in order to improve and allow them to pass the evaluation. In this regard, the respondent's policy aims to increase the efficiency of the after-sales service and shall not be considered as a prohibited conduct in accordance with section 57 of the Trade Competition Act B.E. 2560.

Resolution of the Trade Competition Commission

The Trade Competition Commission passes a unanimous resolution that the respondent does not behave or any action that is considered a violation of the Trade Competition Act, B.E. 2560. The case is dismissed, and there is a notice to the respondent to be careful in communicating the information to the dealer.

The Trade Competition Commission
December 26, 2019