

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Unfair Trade Practices and Actions that are Monopolization,
Competition Reduction, or Competition Restriction in the Fruit Bulk-Buying Business**

Since the fruit bulk-buying businesses involved a large numbers of farmers but a limited number of fruit bulk-buyers; and fruits are perishable, generally having a short harvesting period, this may lead to the unfair trade practices conducted by fruit bulk-buyers that are harmful to farmers under Section 57 of the Trade Competition Act B.E. 2560 (2017) along with The Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018) announced on 4 October B.E. 2561 (2018) or this may lead to collective actions to monopolize, reduce, or restrict competition under Section 54 of the Trade Competition Act B.E. 2560 (2017) along with the Trade Competition Commission Notice on Guidelines for the Assessment of Collective Practices by Undertakings that are Monopolization, Competition Reduction, or Competition Restriction in Market B.E. 2561 (2018) announced on 4 October B.E. 2561 (2018), the Trade Competition Commission sees it is appropriate to determine the guidelines for the assessment of unfair trade practices and actions that are monopolization, competition reduction, or competition restriction in the fruit bulk-buying business.

By virtue of Section 17 (3) of the Trade Competition Act B.E. 2560 (2017), the Trade Competition Commission hereby announces the Notice as follows:

Article 1: This Notice shall be effective on the following day after the date of its publication in the Government Gazette onwards.

Article 2: In this Notice,

“A fruit bulk buyer” means an undertaking who buys fruits or buys, sorts, and packs fruits into any forms of containers to produce or to resell within, or export out of, the Kingdom of Thailand and engages in a contract with farmers – generally known as ‘Long’;

“A farmer” means an undertaking who is a fruit grower in order to sell those fruits and engages in a contract with a fruit bulk buyer;

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“A contract” means a purchase agreement or an agreement of intention to purchase of fruits or else being called otherwise concluded between a fruit bulk buyer and a farmer.

Article 3: Trade practices between fruit bulk buyers and farmers shall be adhered to business principles of free and fair in which they shall be voluntary, non-discriminatory, non-restrictive, or non-obstructive to other business operations unfairly, follow established trade norms, have a fair contract, not exercising superior bargaining power unfairly, or not imposing trading terms and conditions that are restrictive or obstructive to the business operations of other undertakings unfairly and these practices shall be normal and explainable business procedures.

Article 4: Trade practices conducted by fruit bulk buyers may be considered not as free and fair business behaviors causing harms to farmers. The guidelines for the assessment are as follow:

(1) the imposition of unfair terms and/or conditions or the unfair omission of contractual terms,

(a) non-specification of the date or the period of fruit harvest,

(b) exclusion of farmers’ right to seize the deposit or not specifying the explicit time frame for farmers to exercise their rights to seize the deposit in case the contracted fruit bulk buyer failed to harvest fruits predetermined in the contract,

(c) non-specification of the expiry of the contract, causing the farmer to be unable to sell the fruits to other buyers,

(d) unilateral amendment of the contract without consent from the farmer or exercise superior bargaining power to force the farmer to grant the consent,

(e) other forms of unfair terms and/or conditions in the contract;

(2) the determination or the adjustment to lower the purchase price or the imposition of any terms and/or conditions, directly or indirectly, after entering into the contract that may result in the reduction of purchase price unfairly which are

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(a) the adjustment to lower the purchase price, deviating from what predetermined in the contract without due course,

(b) the unfair classification of fruit quality grading or imposition of any other terms at the time of harvest or after, such as fruit size, shape, or skin color, that undermine the actual quality of the fruits and deviated from the predetermined standard of classification or grading to lower the purchase price specified in the contract,

(c) the imposition of other terms and/or conditions or alteration of purchasing terms and/or conditions without due course resulting in the reduction of the purchase price;

(3) unfair trade practices, which are

(a) the delay of harvest deviating from what is agreed in the contract without due course, causing the farmer being unable to sell fruits to other alternative buyers or have to sell those fruits at the lowered price,

(b) the harvest that is short of the predetermined quantity specified in the contract or the selective harvest whereas the contract has specified for the whole orchard, causing the farmer being unable to sell fruits to other alternative buyers or have to sell those fruits at the lowered price,

(c) any other behavior that considered to be unfair resulting in harms to the farmer.

Article 5: Collusion or collective actions among fruit bulk buyers competing in the same market that may be considered as the action that monopolize, reduce, or restrict competition, which are

(a) collectively determining the fruit purchase price or trading terms and/or conditions, directly or indirectly, affecting the fruit price,

(b) collectively restricting the quantity of fruits being purchased by each buyer through prior agreement,

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(c) collectively agreeing to allocate the area where each fruit bulk buyer could make a purchase, or to allocate farmers that each fruit bulk buyer could purchase the fruits from, resulting in the fewer selling choices for farmers.

This Notice is announced on the 23rd of July B.E. 2563 (2020)

Professor Sakon Varunyuwatana

Chairperson of the Trade Competition Commission

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