

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Unfair Trade Practices
between Food Delivery Digital Platforms and Restaurants**

Whereas it is deemed appropriate to determine the guidelines for the assessment of unfair trade practices between food delivery digital platforms and restaurants, pursuant to Section 57 of the Trade Competition Act B.E. 2560 (2017);

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 when thirty (30) days have been lapsed from the date of its publication in the Government Gazette onwards.

Article 2: In this Notice,

“A Digital Platform” means an online business that establishes commercial linkages among restaurants, food deliveries, and consumers;

“A Food Delivery Digital Platform” means an undertaking who provides a digital platform service, in which acting as an intermediary – taking orders and deliver foods – between restaurants, food delivery service providers, and consumers, or between restaurants and consumers on order taking;

“A Restaurant” means an undertaking who sells, or cooks to sell, foods that use or rely on a digital platform as distribution channel;

“Food” mean all objects, being cooked or half-cooked, or any other forms, that human eat, drink, or consume into their bodies by any mean but does not include medicines.

Article 3: Trade practices between a food delivery digital platform and a restaurant shall be based on the principle of free and fair trade whereby such practices are non-compulsory, non-discriminatory, non-restrictive, having explicit criteria, having written predetermined agreement, and being typical business operations in which reasonably explainable.

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Article 4: Under the provision of Article 3, trade practices between a food delivery digital platform and a restaurant may be considered as actions that are harmful to a restaurant, the guidelines to assess such practices are as follow:

(1) Unfair collection of expense, fee, remuneration, or any other benefits; the following behaviors are the examples:

(a) the collection of revenue-based fee – or so-called Commission Fee or Gross Profit (GP) – without due cause or being discriminatory in nature having one of the following characteristics:

1) increasing in fee collection rates, in which significantly deviated from what it used to be, without due cause;

2) differentiated and discriminatory collection of fees without due cause on restaurants of similar products, considering from quantity, sale value, cost of sale, numbers of branch, and quality, for instance;

(b) the collection of advertising fee – both advertisement rate and advertising space on electronic media – without due cause; for example, the collection of advertisement fee for promotional purpose that the restaurant did not received the agreed benefits without due cause;

(c) the collection of promotional fees on special occasions without due cause;

(d) the collection of expense, fee, remuneration, or any other benefits in which never been charged before;

Such practices described in Article 4 (1) shall be informed by a food delivery platform to a restaurant in advance for any reason and purpose of the collection of those fees within a reasonable period of time;

(2) The imposition of unfair trade terms and/or conditions in which restrictive or obstructive to others' business operations, such as:

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the requirement of exclusive dealing for restaurants that are mandatory by prohibiting restaurants to sell their foods via other food delivery digital platforms without due cause and if restaurants do not comply, they will be punished by various trading means, for instance, by increasing commission fee, by refusing or ceasing to give discount on commission fee, by imposing additional expense, fee, remuneration, or any other benefits without due cause;

(3) Unfair exercise of market power or superior bargaining power,

(a) the interference or restriction over freedom to set prices of restaurants without due cause;

(b) the imposition of the pricing terms to use the same rate regardless of the distribution channel (rate parity clause), for example, forcing restaurants to sell similar food at the same price across all distribution channels, restricting pricing alternatives without due cause;

(c) the delay of payment according to credit term;

(d) the termination of contract owing to restaurants' refusal to comply with conditions imposed by, or to do anything requested by, food delivery digital platforms unduly or in a case whereby restaurants complain or prepare to complain about the behavior of food delivery digital platforms to government agencies;

(e) the cessation of restaurants from distribution channels without due cause or not complying with the agreement;

(f) the alteration of contractual terms and/or conditions or the length of a contract without due cause;

(g) the alteration of the length of a contract without prior notice of no less than sixty (60) days;

(4) Any other unfair trade practices

Any practices in which may harm other undertakings, such as coercion or imposing special conditions or limiting or restricting others' business operations that may result in damage.

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This Notice is announced on the 22nd of October B.E. 2563 (2020)

Professor Sakon Varanyuwatana

Chairperson of the Trade Competition Commission

the Trade Competition Commission of Thailand

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