Trade Competition Commission Ruling on
Unfair Trade Practice of Convenience Store Owners

between	L Part., Ltd., through Mr. X	1st Claimant
	R Part., Ltd., through Ms. R	2nd Claimant
	Q Part., Ltd., through Ms. M	3rd Claimant
	V Co., Ltd., through Mr. O	4th Claimant
	D Part., Ltd. through Ms. D	5th Claimant
	P Co., Ltd.	The Alleged

The Complaint

It is evident that the Alleged – the franchisor of the "M" convenience store – had unfairly treated its franchisees; together with the complaint against the Alleged being filed by 1st – 5th Claimants to the Trade Competition Commission as follows.

In the case of the complaint by the 1st Claimant, it could be summarized as: after the completion of the construction of M convenience store, the construction contractor, appointed by the alleged, had demolished the premises without notification. The 1st Claimant, subsequently, received an invoice for the construction without deducting the Claimant's initial construction cost (of the premises being demolished) causing damage to the 1st Claimant. Additionally, the Alleged delivered goods that the 1st Claimant did not order or delivered expired products, resulting in the increase in disposal costs for the 1st Claimant. The Alleged also failed to notify of the products' cost price, compensation for goods sold at a price below the cost, and whether the expired goods are considered as an expense and to be deducted from monthly profit when filing the monthly tax. The 1st Claimant, moreover, requested the Trade Competition Commission to investigate the cost structure of products designated by the Alleged to calculate the profits from the sale.

In the case of the 2nd Claimant, the complaint could be summarized as: after the location survey for the 2nd Claimant's store, it was determined that the M convenience store of a size of a 4-lot or 150-m^2 could be built. However, afterward, only 120 m^2 could be utilized due to the initial proposed area of the store did not comply with the L municipality rules and regulations, incurring damage to the 2nd Claimant.

The complaint by the 3rd Claimant revealed that the convenience store's construction was not transparent and did not meet standards. Electricity leak was realized after the store's opening, resulting in customers not visiting the store for three months, causing lowered sales. Nonetheless, the Alleged charged for store equipment at a price higher than the market price. The 3rd Claimant also received low-quality products, and equipment that are not deem necessary for the store's operation, increasing the expenses. Furthermore, if the 3rd Claimant did not pay for such equipment, the M convenience store cannot be opened. Additionally, the Alleged agreed to buy back some of the equipment from the 3rd Claimant, but never done so. After the termination of the franchise agreement, the Alleged's staff uninstalled some equipment and took them back, cutting off the electricity to the cashier. Furthermore, after the franchise agreement has been altered to be the Franchise 2018 Agreement (Service Agreement), the inventory shall be returned to the Alleged; but after returning that inventory, the Alleged made the accounting entries for those returned inventory as sales of goods without notifying the 3rd Claimant that those would be taxable, resulting in the 3rd Claimant having to pay more VAT and a fine for failing to file the tax. The 3rd Claimant was also charged for the managerial expenses without being informed the purposes for such expenses.

For the 4th Claimant, the Alleged notified this Claimant to amend the franchise agreement to the Franchise 2018 Agreement (service agreement). As a result, the Claimant was invoiced for franchising fees for the M convenience store that differed from the franchise prospectus.

In the case of the 5th Claimant, the Alleged made the Claimant's store reduce the prices of some products below the costs without compensation, causing the Claimant's business to suffer a severe loss. It is also discovered that product prices between the Claimant's store and the Alleged's store are differed.

Facts

The facts from the investigation and evidence are established such:

The 1st Claimant entered into a franchise agreement with the Alleged. The Alleged later informed this Claimant to change from the franchise agreement to the Franchise 2018 agreement (service agreement) without prior notice. This change then resulted in increased costs, reduced monthly revenue share, and the problems as complained to the 1st Claimant.

The 2nd Claimant entered into a franchise agreement with the Alleged. And after surveying of the store's location, the Alleged's employee from the franchising department informed that a 150-m^2-sized M convenience store could be open. During the building renovation in preparation for the opening, the Claimant asked the Alleged to obtain permits from the L municipality but it was refused. The 2nd Claimant then proceeded to obtain the permit with the L municipality by themselves. But after the inspection by the L municipality, it was discovered that the road in the front of the proposed store was a 2-lane road. To open a store of a 150-m^2-sized, the road in front of it must be 4 lanes. Thus, the L municipality ordered the 2nd Claimant to reduce the size of the store to 120 m^2. Such order meant that the 2nd Claimant ended up doing more construction than the actual store area that could be utilized, incurring unnecessary expenses to the 2nd Claimant. Under the franchise agreement, if the 2nd Claimant refuse to pay for construction or does not open the store, a fine of 6 times the total price of all products specified in the contract. The 2nd Claimant also had to pay more to adjust the size to 120 m^2 to comply with the L municipality order.

The 3rd Claimant entered into a franchise agreement with the Alleged. During the construction and renovation of the M convenience store, electricity leaks were found because the Alleged's contractor failed to install a proper earthing. The Claimant then contacted the Alleged to solve the problem. The Alleged, moreover, charged the 3rd Claimant for the cost of construction exceeding what are necessary. And the equipment and supplies that the Alleged installed for the store are more expensive than market prices. There was unnecessary equipment unnecessary for the store operation included a camera, which the Alleged claimed for taking pictures of the goods in the shop, but the 3rd Claimant considered it as unnecessary because a mobile phone could serve the similar function. The Alleged also installed a DVD player without giving reasons how it would support the business and an electric kettle which was malfunction after one month and had to be returned for repair. In addition, 14 shelves were also brought to the store, but the

store's size of 120 m^2 could only support 8 of them. Consequently, the 3rd Claimant incurred unnecessary expenses and could not return the shelves. Additionally, the Alleged's representative also informed the Claimant that if the 3rd Claimant refused to pay for the equipment, the store could not be open.

Regarding the change from the franchise agreement to the Franchise Agreement 2018 (Service Agreement), the inventory must first be returned to the Alleged. After the return, the Alleged entered such return in the system as a sale without notifying the Claimant that it is necessary to file for the tax on those return. This resulted in the 3rd Claimant having to pay VAT on the returned goods and the fine for initially failing to file for the tax. And the 3rd Claimant's monthly financial report, which was a summary of business performance on profit and loss, showed some operational expenses being charged. The 3rd Claimant did not understand what those expenses are for. And when the 3rd Claimant notified the Alleged that they would close the M store, the Alleged told agreed to buy back some of the equipment in the store from the 3rd Claimant which never occurred. And after the 3rd Claimant had terminated the Franchise Agreement 2018 (Service Agreement), the Alleged sent staff to collect the equipment and disconnected the power system from the counter, rendering in the cashier unserviceable.

The 4th Claimant entered into a franchise agreement with the Alleged. Subsequently, the agreement was changed to a Franchise Agreement 2018 (Service Agreement) without prior notice. And the Claimant was charged a fee that is different from what described in the prospectus, where it mentioned a franchise fee of xxx,xxx Thai Baht, but the actual charge was xxx,xxx.xx Thai Baht.

The 5th Claimant entered into a franchise agreement with the Alleged; having problems from operating the M store as follows. The pricing system of the 5th Claimant used a bar code system connected to the Alleged's database online. The 5th Claimant requested to add items to the sale list, but later the price was reduced below the cost without justification. The 5th Claimant perceived that it was the Alleged's promotional sale and price difference would be compensated later. After checking in the system, the compensation never materialized. The 5th Claimant then sent an e-mail to the Alleged asking for an increase in the price to be profitable; but the price remained reduced without any explanation from the Alleged. The 5th Claimant then decide not to label the price as appeared in the system because, otherwise, if so doing, it would inflict a loss for the 5th Claimant. The 5th Claimant also compared the price of the same product

at other M stores and found that the selling prices are different. While the price at the 5th Claimant's store was lower than the cost, another store was selling the product at the market price despite using the same barcode system and the product was not a part of any promotional campaign.

The Alleged operates as a seller or service provider in small retail businesses (M convenience stores) and large retail stores, including franchising of convenience stores to other parties having the details and procedures for franchising of the convenience store as follows:

1. Conclusion of an M convenience store franchise agreement ("Franchise Agreement")

The Alleged will allow potential franchisees to review the contract and negotiate for appropriate terms and conditions. Once the agreement is signed, the Alleged will check the quality and standards of the M store to supervise, monitor, and assist the franchisees in various aspects and ensure the Alleged's standards are met at all times. The Alleged also provides training for franchisees' store managers and employees on the ordering process, accounting, in-store services, revenue and expense calculation, and the franchise system.

2. Construction of an M convenience store under the franchise agreement

When a prospective franchisee expresses an interest to do the business with the Alleged, the proposal containing the area and space must be submitted to the Alleged for a suitable form of M convenient store. Then, the Alleged's employees will check whether the submitted proposal meet the criteria for which form of the store, space available for store utilization, along with applicable laws and regulations. However, it is the potential franchisee's responsibility to obtain permits from the local government.

For the construction of a store, a franchisee can choose a contractor without an approval from the Alleged since it is solely an agreement between the franchisee and the contractor (which is considered as a third party). Still, the construction and decoration must comply with standards set out by the Alleged, because the Alleged needs to control the quality and appearance of the store. The Alleged can, thus, inspect the construction and decoration and provide necessary additional advice or suggestion for improvements.

However, the construction cost on the franchise prospectus is only an estimate and is subject to change because it can vary depending on various factors, such as the size, the

condition of the space, how much renovation is needed, the price of building materials, and the negotiation with each contractor.

3. Criteria for promotional campaigns and income compensation

The Alleged would operate identical promotional campaigns for all stores. Still, to ensure fairness and reduce the risk to the franchisees, the Alleged would compensate for loss in revenue if the franchisees sell those products at the regular price. And each franchisee is already aware of this policy because the Alleged provides training on gross profit (GP) calculation and how to read the data from the daily sales report, and the profit and loss report. In addition, a store manager or the franchisee can check the reimbursement from the profit and loss statement the Alleged sends to the manager or the franchisee via email.

4. Allocation, distribution, and the number of products for the M convenience stores.

The ordering process is done through a computer system that calculates the amount from the sales value. The store manager will check the stock using a PDA (Personal Data Assistant) device, which will calculate how many products are left and advise them on how much to order. If the store manager agrees with the suggested order, the confirmation of the order could be made on the device. Once the order is placed, the Alleged will be notified. A local distribution center will be ordered by the Alleged's employees to deliver the products. If the delivery were incorrect, the distribution center should be alerted within the following day. If the products were damaged, lost, or fewer than the amount ordered, the distribution center should be alerted by the recipient within the next day via email. And if the products were damaged during transit, the claim for such damage should also be made by the following day. Nevertheless, if the amount delivered were exceeding what were ordered or did not match the order, the franchisee can also alert the Alleged to solve the problem.

5. Selling products below cost.

The Alleged does not have a policy to sell products below costs because the revenue sharing from the store is calculated from the "Gross Profit" deriving from sales revenue minus the cost. Therefore, if the selling price is set below cost, there will be no "Gross Profit," and the Alleged will not receive the revenue share. This will also affect the product manufacturers.

6. Sale authorization in specific cases

The Alleged will determine the item list and the appropriate amount of goods for each store. The products selected to be sold at the first opening are called Planogram (POG),

and each store may have a different list of items. The Alleged's criteria to determine which items are POG products include the location, size of the store, and consumer group within the catchment area. POG products' prices in the franchisee's and the Alleged's M stores will be identical. The POG products will vary depending on the size, space available for displaying the products, the environment, and consumers living in the vicinity. The Alleged has a policy of not running promotional campaigns on controlled goods such as liquor and baby formula milk powder. But they can permanently lower the price following predetermined criteria set out by the Alleged.

If a store wishes to sell products outside the assigned list, that particular branch of M store should request permission from the Alleged because the Alleged need to control the type and quantity of goods being offered to follow the Alleged's shelving policy. Therefore, the Alleged will allow the franchisee to sell products not on the required list (non-POG goods) only on a case-by-case basis. When the Alleged allows such a sale, the goods must be logged onto the Alleged's sales system via the POS (Point of Sale System) device to connect the ordering right to the sales system. And such goods must not conflict with the Alleged's standards and image. The Alleged reserves the right to authorize the sale of non-POG products exclusively. If the permitted products are not sold out within the specified period, that goods must be marked down. The markdown criteria, set by the Alleged, are standardized and described in training and the handbook. The franchisee must sell the products at a price according to the Alleged's policy explained to the franchisee.

7. Markdown criteria

Markdown is a generally accepted business practice for convenience stores and retailers. It is intended to sell out the inventory of expired, deteriorating-quality, or unsold products; so the stores can control the quality of the goods, manage the inventory, and replace them with better-selling products. Although the markdown may result in a lower profit or loss to the store, it is considered beneficial overall because they will be able to manage the stock better and attract customers, increasing sales and profitability. There are 3 types of markdowns at the M convenience store:

(1) Reduced to Clear (RTC) is to clear products that are about to expire, defected, or of below standard of quality from the inventory. The reduction follows the "Markdown Price Policy." There are two markdown levels: 25% reduction and 50% reduction from the sale price;

(2) Promotional campaign involves the temporary reduction of the price of certain products to boost sales. The price can either be set at higher or lower than the cost. The store will not suffer a loss because the Alleged will compensate for the difference. Promotions are intended to motivate customers to visit the store; other products may be also purchased in the same visit in which will make up for the products on sale. In principle, the prices of products involved in the promotional campaigns are not set lower than the cost or slightly higher. If the promotion does not improve the sales of POG goods, those goods may be reclassified as non-POG products.

(3) Non-POG products markdown because these are not products recommended by the Alleged, taking POG product's shelf space. If they cannot sell within a reasonable time, it will reduce sales and revenue share. Therefore, the Alleged would mark down the price of non-POG products in the accounting cycle to clear them out. In the first accounting cycle, unsold non-POG products are discounted at 25 percent of the selling price, 50 percent by the second cycle, and 75 percent by the third cycle. However, each store can request an easing of such markdown, and it is the Alleged's discretion to provide appropriate assistance.

However, POG products can become non-POG products under the certain criteria: 1) 70 percent of POG products in a particular M Store are not sold within 60 days; 2) no any M store orders or receives that products after the last M store has accepted within for 60 days; and 3) a single item of the product cannot be sold within a month in each store. The Alleged also provides training to the franchisees and their employees on the markdown criteria, including for non-POG goods before store opening, so all franchisees are informed and able to assess whether it is profitable before requesting permission from the Alleged.

8. Change of the type of the agreement

The Alleged has a policy to change the M store "franchise agreements" to "service agreements," which mainly involves the transfer of product ownership from the franchisees to the Alleged, allowing the better management. Before making the service agreement, the Alleged would provide training and information related to such change and the operational procedures after the changeover to the franchisees and their employee. Currently, all M stores operate under the service agreement.

9. Products buy-back

The Alleged has established clear criteria for the buy-back scheme in the franchise agreement in case of termination as follows. Products that are qualified for the buy-back must not be expired or of deteriorated quality. In practice, the Alleged tries to buy back as many products as possible to prevent them from leaking out of the system and maintain the Alleged's standards and image. If the remaining products are unsaleable, the Alleged would not be able to benefit from repurchasing them in which it is a general business practice.

Issues for Considerations

This inquiry has the following issues to be considered:

1. Whether or not the 1st - 5th Claimants and the Alleged are undertakings as defined by Section 5 of the Trade Competition Act B.E. 2560;

2. Whether or not the Alleged is an undertaking with dominant position committing any conduct prohibited by Section 50 of the Trade Competition Act B.E. 2560;

3. Whether or not the Alleged has undertaken any conduct causing damage to other undertakings under Section 57 of the Trade Competition Act B.E. 2560.

Decisions

The first issue to consider is whether or not the 1st – 5th Claimant and the Alleged are undertakings as defined by Section 5 of the Trade Competition Act B.E. 2560.

Section 5 of the Trade Competition Act B.E. 2560 defines an undertaking as “a seller, a producer for sale, a person who order or an importer of a products into the Kingdom for sale, a buyer for production or resale of goods, or service provider in the business.”

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that the Alleged operates an M convenience store business and sells its franchise agreements to other parties in the form of a service agreement which involves business operations and product distribution. As the Alleged is a retailer or a retailing business service provider in the forms of convenience stores and large retail stores, as well as a seller of convenience store franchises, they are a undertaking per Section 5 of the Trade Competition Act B.E. 2560.

For the 1st - 5th Claimants who all operate M convenience stores after obtaining franchise rights from the Alleged. So, they can be considered resellers or business service providers under Section 5 of the Trade Competition Act B.E. 2560.

The next issue to consider is whether or not the Alleged is an undertaking with dominant position committing any conduct prohibited by Section 50 of the Trade Competition Act B.E. 2560 To consider that issue, it is necessary to establish whether or not the Alleged is an undertaking with dominant position whereby the market definition must be evaluated.

1. Market Definition

1.1 Product Dimension

The market definition concerns only the modern retailer market since retail and wholesale markets are significantly non-substitutable on both the demand and supply sides. Therefore, the goods or services market definition related to this case is the modern small retailer market and local modern retailers.

1.2 Geographic Market

The Alleged has its business presence nationwide through its network of stores. Although competition emerges locally, undertakings in the relevant market are serving consumers at the national level through the price determination and the model of providing service by the headquarter to be applied equally nationwide. Therefore, like other business operators in the market where there are no significant differences between provincial or national geographical market definitions regarding service models and market segmentation, the relevant geographical market definition is nationwide.

Under Section 5 of the Trade Competition Act B.E. 2560 (2017), the undertaking with dominant position is the undertaking or undertakings in a relevant market having market share and sales revenue exceed the criteria predetermined by the Trade Competition Commission whereby a factor or factors relevant to the competition within that market shall be evaluated, together with the Trade Competition Commission Notice on Criteria for being an Undertaking with Dominant Position B.E. 2561 (2018), dated 4 October 2018, Item 3 stating “3. Any undertaking with market share and sales revenue as follow shall be deemed as an undertaking with dominant position: (1) An undertaking in a market of a particular product or service that has market share in the preceding year of 50 percent or more and has sales revenue of one billion (1,000,000,000) baht or more, or (2) First largest three (3) undertakings in a market of a particular product or service

that have combined market shares of 75 percent or more and each and every undertaking has sales revenue of one billion (1,000,000,000) baht or more; The provision in paragraph 1 (2) above shall not be applied to any undertaking with market share in the preceding year lower than 10 percent."

Considering the market share of small retailers in Thailand, it is discovered that in 2018, the small retailer operator with the highest market share was S Company, with a sales revenue of xxx.xx billion Thai Baht and a market share of xx.xx percent. The operator with the second-highest market share was A Company, with a sales revenue of xxx.xx billion Thai Baht and a market share of xx.xx percent. The operator with the third-highest market share was T Company, with a sales revenue of xxx.xx billion Thai Baht and a market share of xx.xx percent. And the Alleged had the fourth-highest market share with a sales revenue of xxx.xx billion Thai Baht and a market share of xx.xx percent. The combined market share of the 3 first largest businesses was 88.04 percent. Nevertheless, only S Company and A Company are undertakings with dominant position. Even though T Company had the third-highest market share, it did not have a dominant position because its market share being lower than 10 percent.

Considering the sales revenue and market share in the past year, although the Alleged had the fourth largest market share and a sales revenue of more than 1 billion Thai Baht, its market share was lower than 10 percent. Therefore, the Alleged is not considered as the undertaking with dominant position per the last paragraph of Item 3, the Trade Competition Commission Notice on Criteria for being an Undertaking with Dominant Position B.E. 2561. Therefore, it is unnecessary to consider whether the Alleged committed any conduct prohibited by Section 50 of the Trade Competition Act B.E. 2560.

The final point to consider is whether or not the Alleged has undertaken any conduct causing damage to other undertakings as provided in Section 57 of the Trade Competition Act B.E. 2560.

The provision of Section 57 of the Trade Competition Act B.E. 2560 (2017) states "an undertaking is prohibited to conduct any action in which causing damage to other undertakings of the following natures: (1) unfairly obstructing the business operation of other undertakings; (2) unfairly exercising market power or superior bargaining power; (3) unfairly imposing trade conditions that are restricting or obstructing others' business operations; (4) any other conduct prescribed in the Trade Competition Commission's Notice."

The issues to be considered according to the 1st Claimant's complaint are summarized as follows.

1. The contractor demolished the building without notifying the 1st Claimant. And after rebuilding the store, the Alleged charged the 1st Claimant the construction cost without deducting the initial construction cost paid by the Claimant, causing the damage to the 1st Claimant.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, revealed that the franchise contract, which clearly specified the rights and duties of the parties, indicates that the Alleged shall be the coordinator of construction, renovation, interior decoration, as well as installations of equipment in the convenient store. And the 1st Claimant, as a franchisee, has the right to choose any contractor without requiring the Alleged's approval. The only condition is the construction must comply with the standards set by the Alleged to maintain the standards across all stores. The Alleged only had the right to inspect the construction and decoration to make necessary recommendations. On the 1st Claimant's claim reimbursement for the initial construction of the demolished building was not received, the 1st Claimant did not provide any evidence to support that the demolition was not a result of its own actions, or not the 1st Claimant’s fault, or the 1st Claimant was forced to demolish the building despite following the standards. Building demolition always incurs high costs and is an important matter. So, if the 1st Claimant considered that the damage has occurred, the consultation, the complaint, or the notification, shall be made directly to the Alleged to clarify all problems. Additionally, the 1st Claimant did not provide any information or documents indicating that the initial construction complied with the Alleged's standards. Therefore, this claim is not substantiated by evidence that the 1st Claimant had built the store or perform its duties specified in the contract. Thus, this complaint does not constitute an offence under the Trade Competition Act B.E. 2560.

2. Next is the claim that the Alleged delivered goods that was not ordered by the 1st Claimant and sometimes delivered expired goods, making the 1st Claimant to dispose of such goods and incurred additional costs.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, revealed that product delivery is a matter of both parties shall fulfill the requirement of their agreement. The franchise agreement and handbook indicate that if the

franchisees receive incorrect deliveries, they should notify the distribution center within the following day. Likewise, if they receive damaged products or the incorrect amount of products, they should send an email to the distribution center by the next day and notify the Alleged. Considering that incorrect deliveries are typical errors in business operation and communication procedures are already laid out in the agreement, this matter does not constitute an offense under the Trade Competition Act B.E. 2560. Likewise, when the 1st Claimant inquired the Alleged about the cost of products, arguing that the 1st Claimant does not know how much profit or loss, this is completely a commercial matter in which is not in the authority of the Trade Competition Act B.E. 2560.

3. The following claim concerns a promotion campaign that made the 1st Claimant sell products at a price below cost and the 1st Claimant does not know if the difference would be compensated.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that both the franchise agreement and the service agreement explicitly specifying participation in advertising and promotion campaigns for the store. The contract requires the Claimant, as the service provider, to be responsible for verifying the sale ledger and determining the monthly remuneration calculation. And it is the 1st Claimant's duty, as a party to the contract, to prepare the documents required for the Alleged to calculate the monthly remuneration and prepare the financial reports. Furthermore, in the case of promotional campaigns, the Alleged will compensate for the price differences of the goods sold participated in the campaign. The store manager or the franchisee can check the compensation from the profit and loss statements sent by the Alleged via email. Therefore, considering this complaint and the documents, the Commission found that the 1st Claimant has not demonstrated that the agreement had been strictly followed nor provided evidence proving the examination of the profit and loss statement sent by the Alleged via emails. Therefore, this issue in the complaint was merely curiosity on the promotional campaigns requiring the 1st Claimant to sell products below the cost or not and the Alleged had compensated for such promotion to the 1st Claimant or not. The 1st Claimant has the right to ask the Alleged all these questions by following the methods and procedures prescribed in the agreement by making written inquiries and submitting them in person or via mail. But after considering the 1st Claimant's complaint, the proof of inquiry or

communication with the Alleged is not present. Thus, this matter does not constitute an offence under the Trade Competition Act B.E. 2560.

4. The 1st Claimant's fourth complaint was on not knowing whether not expired goods are counted towards expenses when filing monthly tax.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, revealed that tax calculation is a financial and accounting matter and not fall within the jurisdiction of the Commission to consider. Therefore, this complaint is dismissed.

5. The complaint regarding the change from a franchise agreement to a service agreement resulted in the 1st Claimant incurring more expenses but reduced monthly revenue share.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that the contract amendment required mutual consent from both parties. And the 1st Claimant agreed to the change by provided the signature. Additionally, the transition applied to all franchisees, not only the 1st Claimant exclusively. And this complaint, regarding the Claimant's increased costs that resulted in reduced revenue share, concerns loss and gain, which are parts of normal business operations. This complaint requires no consideration under the Trade Competition Act B.E. 2560.

6. The 1st Claimant requested that the Office of Trade Competition Commission to examine the cost structure of the products the Alleged requires them to sell at its store, so that the profit can be realized.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that this issue concerns business matters of profit and loss, which is a normal business matter. And there is no provision under the Trade Competition Act B.E. 2560 that allows the Commission to compel the Alleged to give profit or loss information to let the 1st Claimant know how much more or less profit it is making. Therefore, the request is not within the authority of the Trade Competition Act B.E. 2560, and there is no reason to consider this issue.

Therefore, as the 1st Claimant's complaints against the Alleged does not constitute an offence under the Trade Competition Act B.E. 2560, the Trade Competition Commission unanimously decided to dismiss its complaints.

The issues to be considered according to the 2nd Claimant's complaint are summarized as follows.

The L municipality inspected the 2nd Claimant's space and found that the size of a 4-lot or 150 m^2 store violated the municipality regulation because it is too close to a public road. The municipality then ordered the Claimant to reduce the size and allowed them to open a 3-lot or 120 m^2 store.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that the Y branch, S province franchise contract does not determine the process for obtaining construction permits from the government. This fact is in line with the 2nd Claimant's testimony that permits obtainment responsibility is not specified in the contract. With no clause in the contract to deal with the matter, the 2nd Claimant shall follow the agreement's procedures for notification or communication to make an inquiry about the permit. Additionally, the Alleged submitted a document explaining its policies on store construction. It states that it is the franchisee's responsibility to obtain construction permits from the local government, and the Alleged does not have any procedures for such operation. It also states that the franchisee is responsible for the construction, including choosing contractors. The Alleged is not involved with these processes. Suppose the local government orders changes to the store's layout or size. In that case, the franchisee can inform the Alleged to consider modifying the store size, the number of shelves, or the number of items being sold in the convenience store to comply with the authority. Or, if the authorized size would affect the franchisee's anticipated revenue, the franchisee may decide to revoke the franchise agreement and the store opening. This is corresponding with the Alleged's employee, Mr. Q, testimony that he had informed the 2nd Claimant that permits from the municipality must be obtained before allowing the contractor to proceed with the construction. And, if the municipality prohibits the construction, the 2nd Claimant must notify the Alleged to solve the problem together by adjusting the size to comply with the law and regulations. Additionally, after considering documents and testimonies, the 2nd Claimant did not explain the issue on obtaining permit, and there were no documents proving this problem. The Alleged's testimony that the 2nd Claimant must submit the construction plan to the government agency to obtain the permits first is admitted. This demonstrates the importance of

acquiring government permits. The 2nd Claimant failed to follow the communication procedure, nor did notify the Alleged when the problem of store size arose as the contract specified.

The 2nd Claimant's signature and the R Part., Ltd.'s seal on the contract mean that they have read it thoroughly and certified its validity. Therefore, the 2nd Claimant's failure to notify the Alleged of any damage or problems regarding obtaining permit operational matters, which the assistance from the Alleged could be requested. However, the procedures laid out in the contract were not followed. If the 2nd Claimant requires any assistance, the request should be made directly to the Alleged, but there is no documented proving such request was made. Thus, adjusting the size of the store to be 3 lots to comply with the municipality's permit is the 2nd Claimant's responsibility.

Considering the circumstances of the complaint and various evidence, the An Alleged's actions towards the 2nd Claimant do not constitute an offence under the Trade Competition Act B.E. 2560. Accordingly, the Trade Competition Commission reached a unanimous decision to dismiss this complaint.

The issues to be considered according to the 3st Claimant's complaint are summarized as follows.

1. The 3rd Claimant considers the store construction not transparent and below standards, resulting in low customers visits and low sales. Along with Mr. Q, the Alleged's employee's testimony that they have assigned an electrician to inspect and fix the problem without additional charge.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that this issue arose from the contractor's negligence. The franchise agreement states that the Alleged shall be the coordinator on construction, renovation, interior decoration, equipment installation, and standards compliance and the franchisee shall make contracts and orders with service providers or sellers that authorized by the Alleged directly. The 3rd Claimant are also obliged to pay for orders directly and have responsibilities toward the authorized service providers or sellers. The franchisees are aware that the Alleged has informed the service providers or sellers that these contracts are made directly between them and the franchisees. Considering these facts, the 3rd Claimant can exercise their claiming rights towards the contractor if damages occur. And the Alleged is only a coordinator and facilitator. Thus, this conduct does not constitute an offence under the Trade Competition Act B.E. 2560.

2. The Alleged brought in equipment unnecessary for the store's operation without informing price and amount, but the 3rd Claimant was charged higher than the market price of respective equipment. The 3rd Claimant also received poor-quality products and could not return them. And if the 3rd Claimant refuse to pay for such equipment, the store could not be open. Mr. Q, the Alleged's employee, testified that the Alleged had excluded some of the equipment unnecessary to the store operation, such as camera, because they can use a mobile phone to take pictures instead. But for the video player, all stores are required to display advertising materials to customers every day. However, it was later being replaced with an intranet audio system. The number of shelves is assigned depends on the store size and the number of products on sale. As such, some branches may have more than needed in the case new products are added. However, they cannot be returned because they came in a standard set that the Alleged's has previously informed.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that the equipment and supplies that the 3rd Claimant claimed to be unnecessary is standard equipment that the Alleged requires franchisees to have for the operation of the stores, although some of them may not be used afterward due to being replaced by other equipment. However, under the Alleged's policy, it is an administrative matter that applies to all stores indiscriminately. This is considered a common and understandable business practice that does not violate the Trade Competition Act B.E. 2560.

3. The 3rd Claimant received poor-quality products, such as an electric kettle and a sausage grill.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that this case involved material defects and practical product management issues. And all franchisees had received the equipment. Therefore, this problem concerns the product quality or defects that are not considered an offence under the Trade Competition Act B.E. 2560.

4. The 3rd Claimant receive more shelves than needed.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that the Alleged's general standard determines the number of shelves delivered to the franchisees. And it is a condition based on the approximate size of the store. The Alleged refusing and unable to determine the number of shelves on an individual store

basis are matters of internal management by which vary from one store to another. This case is not an offence under the Trade Competition Act B.E. 2560.

5. The 3rd Claimant had to purchase equipment at higher than market price.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that equipment purchase for the store operation is a service provided for the store opening preparation by facilitating price for equipment and suppliers between the franchisees and equipment sellers. Regarding the cost of sales equipment, the Alleged had inform a potential franchisee of the overall price of the equipment, which is set at a standard number for all franchisees. The Alleged is not forcing or abusing their bargaining power to compel the 3rd Claimant to buy expensive equipment but facilitating the store opening preparation per the franchise contract. Thus, this conduct is not an offence under the Trade Competition Act B.E. 2560.

6. The 3rd Claimant planned to close the store and was informed by the Alleged that some store equipment would be bought back but never happened. Instead, after the contract termination, the Alleged sent its staff to collect the equipment. As a result, the 3rd Claimant lost access to the cashier's electrical system, and unable to fix it. Mr. Q, the Alleged's employee, explained that the franchise agreement and the Franchise Agreement 2018 (Service Agreement) do not specify the conditions for equipment buyback. But the Alleged has the policy to allow the franchisee or service provider to sell the equipment back with the discount rate of 20 percent per year, and remaining months are rounded up to a year. Later the policy has been changed. The new policy indicates that buybacks are considered on a case-by-case basis because some equipment has been found to be unusable.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that the franchise agreement and Franchise Agreement 2018 (Service Agreement) do not state the conditions for equipment buyback. Therefore, the Alleged is not obliged to purchase them back. On the other hand, it is the Alleged's discretion to consider repurchasing the equipment on a case-by-case basis. Therefore, this conduct did not violate the Trade Competition Act B.E. 2560.

7. Changing the old agreement to the new one required returning the inventory before starting the new contract. Once the 3rd Claimant had returned the goods, the Alleged entered the goods as being sold without notifying the Claimant to file taxes on those items. This

resulted in the 3rd Claimant having to pay VAT for the goods and a fine for initially failing to file taxes. The Alleged explained that the change from the franchise agreement to a service agreement mainly involved transferring the product ownership from the franchise (service provider) to the Alleged for better product management. And before signing the contract, the Alleged had provided training and information related to the change. Currently, all M stores operate under the service agreement. The change will increase the service provider's benefits from higher compensation on promotional campaigns from the original 12.77 percent to between 0 and 19 percent depending on the sales volume. This will encourage the service providers to try and sell more products. As for the inventory return, the franchisees must pay the tax from the sale according to the law. The franchise agreement requires the franchisees to be responsible for paying the income tax, VAT, and any other tax incurring from the store's operation. The franchise agreement (service agreement) also specifies that the franchisees shall be responsible for paying their income tax, VAT, stamp duty, and all other taxes incurred by providing the service.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that the 3rd Claimant's responsibility to pay the VAT from returning the inventory is its contractual duty. Therefore, this conduct did not violate the Trade Competition Act B.E. 2560.

8. The 3rd Claimant found a management fee item (including the refrigerator and icemaker) in its monthly financial reports. However, the 3rd Claimant could not comprehend what is the purpose of such fee because the refrigerator and the icemaker are the Claimant’s properties in which have been paid in full at the store’s first opening.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that this fee is charged according to the contract. And if the 3rd Claimant has any questions, the inquiry should be made to the Alleged directly. Therefore, this conduct did not violate the Trade Competition Act B.E. 2560.

9. The 3rd Claimant was charged for unnecessary construction works. They were invoiced xxx,xxx.xx Thai Baht for electrical and communication equipment installation. However, due to the lack of experience, the 3rd Claimant did not know why the price was high despite the high-power electrical transformer being already installed. The Alleged testified that the construction of the M store construction and renovation are opening for bidding by contractor in

each area, and the franchisee was the one who approved the construction works and expenses, as well as inspected the finished job along with the Alleged's foreman.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found the franchise and service agreements do not specify the electrical and communication system installation cost. And if the 3rd Claimant feels the prices were high, the complaint should be made directly to the Alleged. Furthermore, the clauses on communication in the franchise contract specified any message or inquiry under the agreement shall be made in writing and shall be delivered in person or via registered mail. The service agreement also has the similar clauses. Therefore, this conduct did not violate the Trade Competition Act B.E. 2560.

Because the 3rd Claimant's complaints do not constitute an offence under the Trade Competition Act B.E. 2560, the Trade Competition Commission unanimously decided to dismiss the complaints.

The issues to be considered according to the 4th Claimant's complaint are summarized as follows.

1. The 4th Claimant accusing Mr. Q, the Alleged's employee, asked to change the agreement between the Claimant and the Alleged from the franchise agreement to the service agreement.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, found that this change in the contract, even though it altered the agreement's substance, mutual consent from both parties was required. The Alleged could not unilaterally compel the Claimant to accept the change. And the 4th Claimant also testified that the change did not have significant impacts. The only difference was the transfer of the inventory ownership from the Claimant to the Alleged. Moreover, the 4th Claimant also testified that the change did not impose any trade conditions. Therefore, the contract change did not harm the 4th Claimant's business. Since there is no damage and both parties agreed upon the change, this issue only involved a substantive modification in the agreement to amend it to follow the evolving business operations. Because there is no evidence that this change was solely aimed at the 4th Claimant but applied to all M stores, this is not targeted abuse. Thus, this complaint does not constitute an offence under the Trade Competition Act B.E. 2560.

2. The 4th Claimant was charged a franchising fee that was different from the franchise prospectus.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, revealed that the M store franchise contract specified an "entrance fee" of xxx,xxx Thai Baht (including withholding tax) for each store, which is in line with the 4th Claimant's testimony. The 4th Claimant stated that it is understood that the xxx,xxx Thai Baht was a one-off fee, and there would be no more fee to be paid. But the Alleged's documents explained that the entrance fee in the agreement of xxx,xxx Thai Baht (including withholding tax) for each store was intended for the franchisee to pay xxx,xxx Thai Baht, deducted by the 3 percent withholding tax, bringing the total to xxx,xxx.xx Thai Baht. And if it is not intended for the franchisee to pay the xxx,xxx Thai Baht fee, the contract would not mentioned the xxx,xxx Thai Baht amount, including the withholding tax, because the payer is obligated by the law to pay the withholding tax from the total fee of xxx,xxx Thai Baht. Moreover, the franchise agreement also requires the franchisees to be responsible for any expenses incurred by the operation of the M store, including income tax and other taxes. The Commission understands that this problem arose from a misunderstanding between the 4th Claimant and the Alleged on the x,xxx.xx Thai Baht difference, in which the Alleged explained as the withholding tax. After thoroughly examining the franchise contract, the clauses on communication in the franchise contract specified any message or inquiry under the agreement shall be made in writing and shall be delivered in person or via registered mail. The delivery of such message or inquiry is considered complete once a message or question has been handed to the recipient. Therefore, if the 4th Claimant thought that the xxx,xxx.xx Thai Baht fee was incorrect, the Alleged shall be inquired to explain the rationale as stated in the agreement. Moreover, the 4th Claimant testified that Mr. Q was the coordinator for this contract, and the 4th Claimant had his telephone number and could contact him. It was easy for the 4th Claimant to ask about the source of the difference calculation. But the 4th Claimant did not ask nor send a message to the Alleged. On the contrary, it was testified that the 4th Claimant paid the fee via a cheque. Therefore, this matter involves interpretation of contract which is not an offence under the Trade Competition Act B.E. 2560.

After considering the 4th Claimant's complaint and the evidence, the Trade Competition Commission found that these complaints do not constitute an offence under the

Trade Competition Act B.E. 2560. The Trade Competition Commission unanimously decided to dismiss the complaints.

The issues to be considered according to the 5th Claimant's complaint are summarized as follows.

1. The Alleged issued a policy that the 5th Claimant to reduce the price of products in its store and for some products to reduce the price below cost without compensation. This caused a loss for the 5th Claimant suffering a loss. The question is whether the Alleged took advantage of the 5th Claimant and mistreated them, constituting an offence under the Trade Competition Act B.E. 2560.

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, discovered that the Alleged's employee, whose duty was to select the product to be sold at the stores, testified that product selection is based on the store location, the product's novelty, and product turnover under promotional campaigns. Products designated to be sold at each store are called POG products, which are assigned at the store's first opening after considering the store location, size, and consumers in the vicinity. Non-POG products are products not designated to be sold at each store. For example, pork bouillon cubes are POG products in other regions but are non-POG products in the Southern region because of the large Muslim demographic. Thus, each store will have different products for sale. As for controlled goods, such as alcoholic beverages and baby formula milk powder, the Alleged has a policy of not arranging promotional campaigns on them. But their prices could be permanently reduced. Controlled goods can be either POG or non-POG. The change from POG to non-POG products and lower-than-cost markdowns follows the criteria as described in the "Facts" section.

Therefore, after considering this case, the Alleged's documents, their employees' testimonies, economic factors, local consumer purchasing power, and marketing strategies, the Trade Competition Commission found that revenue loss, reduced profit share, and the overall business loss from the policy are general business operation issues. It is generally accepted that businesses have the risk of running loss; no business can be guaranteed to be profitable. For the case of the 5th Claimant asking for the accounting information and retrospective revenue calculation, the 5th Claimant is entitled to do so by following the clauses under the agreement by sending its inquiries to the Alleged, exercising its fundamental rights under the franchise contract.

Therefore, considering the complaints and evidence, the Alleged's conduct does not constitute an offence under the Trade Competition Act B.E. 2560.

2. On the matter of difference in products prices

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, the Alleged's explanation, and 5th Claimant's photographs of products, found that the 5th Claimant's complaint on price differences concerns Product T, which is a non-POG product that the 5th Claimant, as the franchisee of the M store, H branch, asked for the permission to sell. The 5th Claimant sent an email to the Alleged to submit a list of products it would like to sell wishing to expand the variety of products at the store, to which the Alleged gave the permission. The correspondence details appeared in the copies of emails between the 5th Claimant's store manager and the Alleged's employee during the time. Likewise, the W shower cream was a non-POG product that the 5th Claimant requested permission to sell from the Alleged via email. Thus, as Product T and W shower cream are non-POG products; they are subjected to sale assessment under the contract's condition that if they cannot be sold after sometime on display, they will have to be marked down to clear them out and make space for POG products. This product management process is there to increase the potential sale. And the 5th Claimant was able to check the non-POG products markdown on the system.

Furthermore, unsold non-POG products are not included in the price compensation scheme because the Alleged does not assign them to the stores. If the sale performance affected in a reduced revenue share, causing damage to the 5th Claimant. Moreover, the 5th Claimant or its representative has been given sufficient training on standards and procedures and the markdown criteria for POG and non-POG products before deciding to invest in the store. And before making the franchise contract, the 5th Claimant had undergone the Alleged's training to ensure an understanding of business procedures and conditions. Additionally, the 5th Claimant can learn about the non-POG products management principles and markdown criteria from the franchise handbook on inventory clearance. The Alleged also conducted additional periodical training for franchisees, including the 5th Claimant. Therefore, in the case of Product T and W shower cream, the price difference realized by the 5th Claimant was because they are non-POG products that had been marked down to clear them out of the shelves. Thus, considering the complaints and evidence, the Alleged's conduct does not constitute an offense under the Trade Competition Act B.E. 2560.

3. On the photographs of yellow or red price labels on the shelves compared to product information on the PDA device,

The Trade Competition Commission, after considered the facts, documents, evidence, and relevant laws, revealed that, although the 5th Claimant signed her name under the pictures, there is no indication in which M store such products were sold. Furthermore, there were neither documents nor descriptions of how the photographs are related to the conducts prohibited by the Trade Competition Act B.E. 2560. Moreover, the Prices of Goods and Services Act B.E. 2542 determined some goods or services to be controlled goods or services according to the Notice of the Central Committee on Prices of Goods and Services (No. 53) on the List of Controlled Goods and Services dated 3rd July B.E. 2562 stated that markdowns and promotional campaigns on controlled goods are prohibited. After examining photographs that were claimed as evidence, the photographs show information on a PDA device along with a product on a shelf with a price label. Comparing the prices on the label and on the device revealed that they are different, but no explanations were offered. The 5th Claimant did not provide any statement on the cause of the difference or the calculation method. Thus, the 5th Claimant's evidence for this case is insufficient to prove that the Alleged has violated the Trade Competition Act B.E. 2560.

After considering the actions in the 5th Claimant's complaint and the evidence, the Trade Competition Commission found that their complaints do not constitute an offence under the Trade Competition Act B.E. 2560. Accordingly, the Trade Competition Commission unanimously decided to dismiss the complaints.

Moreover, although some conducts took place before and after the Trade Competition Act B.E. 2560 came into effect, the Trade Competition Commission has carefully considered each issue raised and Section 29 of the Trade Competition Act B.E. 2542, which was the governing law at the time of accused conducts occurred, stating "undertakings shall not commit any conduct that was not free and fair competition that results in destroying, damaging, restricting, obstructing, or limiting other undertakings or prohibiting them from doing business or forcing them out of business." However, the Trade Competition Act B.E. 2560 does not contain any provision prohibiting conducts beyond free and fair competition like the Section 29 Trade Competition Act B.E. 2542. Therefore, the new law came into effect after the actions took place and decriminalizes them. As a result, considering the Alleged's conducts toward all five Claimants, they are not constituted as violation of the Trade Competition Act B.E. 2560.

Resolution of the Trade Competition Commission

The Trade Competition Commission reached a unanimous decision that the Alleged's conducts are not prohibited by Section 57 of the Trade Competition Act B.E. 2560 and the case is dismissed.

The Trade Competition Commission

4th March 2021