

Competition Authority and Jurisdiction



Article 1 Competition Authority and Jurisdiction

1. How important is Trade Competition?

Competition is an important factor that leads to successful development such as sports which allow equal competition under the same rules. Ultimately, the most trained and successful athletes achieve victory from the competition. For this reason, trade competition is at the heart of business development that leads to the emergence of technology and new innovations from free and fair trade competition in a market. It also results in the production of goods and services of various quality and reasonable price which directly affects the growth of the domestic economy as well as international trade and investment.

2. What is the Competition law?

Many countries around the world have stipulated trade competition rules to promote free and fair competition in a market and to prevent monopoly or taking advantage of the other business operators or using unfair trade practices with competitors in the market. With the intrinsic purpose of the law that every undertaking, whether small business and entrepreneurship, medium-sized enterprises or large business entities must comply with the same rules. These trade competition rules are called "Anti-monopoly Law", "Antitrust Laws ", or "Competition Law." In Thailand, the current competition rules are called "Trade Competition Act B.E. 2560 (2017)", in which the antitrust policy of Thailand began to appear clearly in accordance with the Price Fixing and Anti-Monopoly Act B.E. 2522 (1979).

3. Business ethics and Competition laws

Although business operators in Thailand have already begun to be aware of business ethics in order to have good governance which leads to transparency, fairness and social responsibility such as not interfering with others to usurp customers by using superior market power to take advantage of other entrepreneurs in the same market. However, business ethics are only guidelines for business operators to indicate whether any behavior in a business should be done or should not be done so as to create moral acceptance, credibility and trust by partners, competitors, customers and related parties. Unfortunately, there is no punishment in case of inappropriate behavior because there is no legal sanction.

Competition laws are government regulations that are established to regulate market structure and business behavior in the competitive market in accordance with international rules around the world in the digital era. However, prior to the announcement of trade competition regulations, there will be a hearing from all stakeholders, related parties and the general public.

Did you know: Same or different between Competition law and Consumer protection law

Competition law and consumer protection law have different objectives.

Competition law aims to protect the competition process in the market in order to promote a free and fair competition which ultimately benefits the economy as a whole. The Office of Trade Competition Commission plays an important role to assure the enforcement of Competition law.

Consumer protection law focuses on the protection of consumer rights from the consumption of goods and services including the remedy and compensation of damage to merely consumers. The Office of the Consumer Protection Board serves as a regulatory agency for the enforcement of consumer

Price of goods and services law monitors the prices of goods or services that are too high or too low including with the stockpiling of goods under the enforcement by the Department of Internal Trade, Ministry of Commerce.

4. Who does the Competition law regulate?

The Trade Competition Act B.E. 2560 (2017) is a law that regulates business behavior and giving the definition of "business operator" as "a distributor, a manufacturer for distribution, an importer, a buyer for production or reselling products, or a service provider in the business."

5. Are there any exceptions to the Competition law?

There are four exceptions under the Trade Competition Act B.E. 2560 (2017) as following;

Government administrations such as Central, regional, or local government administrations

Government agencies such as State enterprises, Public organizations, or Other government agencies, especially those carried out in accordance with the laws or resolutions of the Cabinet which are necessary for the purpose of maintaining national security, public utilities public interest, society benefits, or the provision of public utilities

Groups of farmers, Cooperatives, or Cooperative Groups recognized under the law and having the aim in their business operations to benefit the vocation of farming

Businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters

At present, there are 6 specific business regulators as following;

Businesses related to broadcasting, television, and telecommunications regulating by The Office of The National Broadcasting and Telecommunications Commission (NBTC)

Energy business regulating by the Office of The Energy Regulatory Commission (ERC)

Financial business regulating by the Bank of Thailand (BOT)

Securities business regulating by the Securities and Exchange Commission (SEC)

Insurance business regulating by the Office of Insurance Commission (OIC)

Civil aviation business regulating by the Civil Aviation Authority of Thailand (CAAT)

If there is any unlawful behavior in conducting business violating Competition law?

- Businesses that regulate under specific laws governing trade competition shall be enforced according to specific laws.
- Businesses that do not yet regulate under specific laws shall be enforced under the Trade Competition Act B.E. 2560 (2017).

Did you know that even E-Commerce or online shopping is also under the supervision of Competition law?

Currently, E-Commerce business or online trading in Thailand becomes popular with many entrepreneurs and consumers; such as, buying products on a daily basis, food delivery services, transportation of goods, hotel reservations, etc., thanks to government's policy to promote the digital economy or online trade, a large number of business operators have been vigorously competing in the business. Hence, there are some business behaviors of online business operators that may violate Competition law; such as, the collection of high fees from restaurants, stipulating conditions to unreasonably discourage or restrict fair competition from other E-Commerce businesses or online traders.

Trade Competition Commission

The Trade Competition Commission or "TCC" is the main organization in overseeing and driving the enforcement mechanism of the "The Trade Competition Act B.E. 2560 (2017)". The law stipulates that a trade competition commission consisting of 7 positions: one Chairman, one vice Chairman and five commissioners, derives from the selection Committee and proposes to the Cabinet for approval and the Prime Minister to issue the order of appointment. The Trade Competition Commission is independent in performing duties and holds the position for a four-year term, full-time work, and shall not hold any position in a business organization which has common objectives or commercial benefits so as to ensure transparent, agility without conflicts of interest.

In this regard, the Trade Competition Commission has an important role and authority in supervising business operations and establishing announcements for free and fair trade competition including with the power to present opinions to the Minister and the Cabinet regarding the government policy on trade competition which may impact on domestic trade competition and recommend to the Minister for the issuance of ministerial regulations under the Trade Competition Act B.E. 2560 (2017). In addition, the Trade Competition Commission may give advice to government agencies regarding regulations or orders that hinder trade competition which may restrain, restrict, or reduce competition causing unfairness between business operators.

Office of Trade Competition Commission

According to the Trade Competition Act B.E. 2560 (2017), the Office of Trade Competition Commission is a government agency which is not a government administration, nor a state enterprise. Rather, the Office of Trade Competition Commission is a juristic person with independence in terms of

personnel, budget, unity, and flexible administration under the supervision of the Secretary-General of the Trade Competition Commission. The Office of Trade Competition Commission has duties as following.

- Monitoring the behavior of business operators that may be unlawful under Competition law.
- Receiving complaints, seeking facts, and collecting evidence on the complaints.
- Studying and proposing announcements for promotion, development and supervision for free and fair competition.
- Establishing a database of market sizes of goods or services that is likely to cause monopolies.
- Coordinating and cooperating with government agencies and relevant government agencies.
- Arranging for cooperation with other organizations on training and knowledge development regarding Competition law.
- Exchanging information and collaborating with domestic or foreign organizations.

Behavior violating the Competition Law

(1) Business operators using market dominant power including;

- By unfairly fixing or maintaining the level of purchasing or selling price of a good or service; such as, setting prices to eliminate competitors, setting a price that is lower than the cost, setting unfair discrimination prices for business partners (different sales prices), setting unfair high prices, etc.

- Imposing unfair conditions for a trade partner; such as stipulating a trade partner to buy or sell products or services only from them or requiring conditions for a trade partner to purchase goods or services tying with a certain product etc.

- suspending, reducing or restricting service, production, purchase, sale, delivery, importation into the Kingdom without any appropriate reason Including destruction or damaging goods in order to reduce the quantity to be lower than the demand of market

- interfering with other business operators without appropriate reason

(2) Business operator conducting a merger which may substantially reduce competition in a market, or may cause a monopoly, or result in a dominant position in a market.

(3) Business operators collaborating with other business operators competing in the same market practice any business acts which cause monopolization, reduction or restriction of competition in that market which are price fixing agreement, quantity restriction agreement, bid rigging, and market allocation.

(4) Business operators collaborating with other business operators competing in a market practice any business acts which cause monopolization, reduction or restriction of competition in that market which are price fixing agreement, quantity restriction agreement, and market allocation between business operators who are not competitors in the same market, reducing the quality of products or services, appointing of the same dealer, imposing conditions or guideline regarding the purchase or distribution of goods or services in order to be performed as agreed.

(5) A business operator undertakes any conduct resulting in damage to other business operators; such as, unfairly obstructing the business operation of other business operators, unfairly utilizing

superior market power or superior bargaining power, unfairly setting trading conditions that restrict or prevent the business operation of others etc.

(6) A domestic business operator undertaking a legal act or contract with a foreign business operator without appropriate justification resulting in a monopoly conduct or unfairly restricting trade, as well as causing serious harm to the economy and consumers' benefits as a whole.

For more details can be read from the next articles.

Examples of illegal conducts violating the Competition Law

Strategies for unfairly using market dominant power (Abuse of Dominance)

Being a large business operator or a person who holds market dominance is not considered as a violation of the Competition law in any way. But it would be illegal only if unfairly using the dominant market power with competitors or trading partners.

For example, a business operator who was a major manufacturer and distributor of motorcycles in Thailand using its dominant market power to force several independent motorcycle dealers to sell only their own products and also prohibit the sale of competitor brands. As a result, many independent motorcycle dealers and competitors severely suffered business damage.

Moreover, a business operator, a major producer and distributor of energy drinks, employed the dominant market power to prohibit independent energy drink dealers from selling competitors' energy drinks - If independent energy drink distributors did not comply, they would not receive delivery of the major energy drinks. This is another example illustrates that exploiting behavior with other businesses may result in an offense under the Competition law.

It also includes the "Tying Sale strategy" which is a strategy used by large business operators or those with dominance in the highly competitive market by tying two or more products and forcing trade partners to purchase products. Mostly, there are two types of products in different markets to sell together which the main product is the popular product tying with the other products that are not yet well-known or popular. In so doing, buyers who intent to purchase only the main product are compelled both products since the buyers are unable to separate the purchase of the main product or buy only the goods that are attached; such as, the sale of liquor tying with beer, or the sales of soda tying with drinking water etc.

Did you know: A business operator can request prior consultation?

In the event that business operators are uncertain whether their business conducts are illegal under the competition law or not; such as, determining business strategies. The law allows the business operators to submit a request to the Trade Competition Commission for consideration and make a prior decision in order to prevent any illegal business conduct.

What to do when seeing illegal acts against the Competition Law?

Any business operators or a person who have suffered damage or any person who witness acts in violation of the Competition law can make a complaint to the Office of Trade Competition Commission in the following ways:

- Complaints in writing by submitting in person or by post
- Verbal complaints to officers on duty or over the phone
- Complaints via electronic or network information systems (www.otcc.or.th)
- Complaints by other methods as specified by the Office of Trade Competition Commission

When the Office of Trade Competition Commission has received a complaint, an appointed officer will search for facts, gather evidence, and provide a summary report on the facts finding for submission to the Trade Competition Commission. The Trade Competition Commission considers whether the complaint is a criminal offense or an administrative offense. The Complaint will proceed in accordance with the Regulations of the Trade Competition Commission Subject: Complaints and the Search for Facts and Criminal Prosecution and Administrative Litigation B.E. 2562 (2019).

In this regard, a criminal offense under the Trade Competition Act B.E. 2560 (2017) will be pursued under criminal procedure in the jurisdiction of the Central Intellectual Property and International Trade Court. In the case of an administrative offense, the Trade Competition Commission will decide and make an administrative order.

Did you know: It is possible to settle and terminate criminal cases?

In some cases, if the offender accepts the confession and agrees to pay the fine, he or she can ask the Trade Competition Commission to settle and terminate the criminal case. The law stipulates that once the offender has paid the fine in the amount comparable within the specified period. The case is considered to be settled under the provisions of the Criminal Procedure Code.

Did you know: The injured person can sue for damages?

Business operators who have been damaged by the actions of the offenders under the Trade Competition Act B.E. 2560 (2017) may sue for damages from the offenders.

Injured consumers and members of associations or foundations who have been injured may file a case for compensation through the Consumer Protection Board and associations or foundations recognized by the Consumer Protection Board under the law on consumer protection on case by case basis.