

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Unfair Trade Practices
between Undertaking in Wholesaling/Retailing and Producer or Distributor
B.E. 2562 (2019)**

Whereas it is necessary to legislate the guidelines for the assessment of unfair trade practices between an undertaking in wholesaling/retailing and a producer or distributor, in which such practice inflict harm to other undertaking under Section 57 of the Trade Competition Act B.E. 2560 (2017), the Trade Competition Commission, by virtue of Section 17 (3) of the Trade Competition Act B.E. 2560, therefore, announces the Notice as follow:

1. This Notice is called “The Trade Competition Notice on Guidelines for the Assessment of Unfair Trade Practices between Undertaking in Wholesaling/Retailing and Producer or Distributor B.E. 2562.”

2. This Notice shall be effective on the following day after the day that this Notice being published in the Government Gazette onwards.

3. In this Notice,

“Undertaking in Wholesaling/Retailing” means an undertaking who is a wholesaler or a retailer of consumer goods with a modern system of distribution, having or not having branch, or having an administration of franchise and using modern technology for management to facilitate its customers, such as hypermarket, cash and carry, supermarket, specialty store, department store, and convenient store;

“Producer or Distributor” means a producer, a distributor, or an importer for resale in the Kingdom or a service provider, and a supplier who is a producer for sale or a distributor shall be included in this definition.

4. A trade practice between an undertaking in wholesaling/retailing and a producer or distributor shall depend on the principle of free and fair business in which it shall be voluntary, non-discriminatory, non-obstructive, having a clear norm, having a written agreement, and being a normal, reasonable and explainable, business practice.

5. A trade practice of an undertaking in wholesaling/retailing in which may be deemed as an action that inflict harm to a producer or distributor unfairly shall be assessed by using the following guidelines:

(1) An unfair price determination by specifying a buying price from a producer or distributor at a lower level than normal or compelling a producer or distributor to reduce a price of delivered goods without due cause;

(2) An embezzlement of economic benefit by compelling a producer or distributor to transfer any benefit to an undertaking in wholesaling/retailing; this benefit includes money, property, asset, or service that the producer or distributor is not obliged to do or unreasonably higher than what has been obliged in the agreement, taking into account of benefit a producer or distributor shall obtain reciprocally, for instance,

(a) Entrance Fee or Listing Fee that an undertaking in wholesaling/retailing charges in addition to what have been agreed or specified in the agreement or additional charges upon a minor change of a packaging of the delivered goods that are already on sale whereby the quantity and quality of that product remain unchanged without due cause;

(b) Special Display Fee, such as shelving fee or fee for placement in a special shelf location to attract customers whereby an undertaking in wholesaling/retailing overcharges such fee without due cause;

(c) Supplementary Fee or Discount in Special Occasion, such as an opening of a new branch or a branch anniversary in which a producer or distributor have to pay or pay more than originally agreed and have to bear a burden for other unrelated branches;

(d) Other economic benefits of undue cause, such as promotional expenses, rebates for achieving revenue or unit target, discount to compensate for loss of delivered goods from a producer or distributor;

(3) An unfair return of goods by an undertaking in wholesaling/retailing for a whole or a part thereof without due cause in which is not a fault or defect of a producer or distributor, or without prior agreement to do so, or without consent from a producer or distributor; an unfair return of goods shall include an equivalent action of goods return, for example, a change of sale agreement to

consignment agreement, a swap of one goods for another, or other trade practices in which deemed to be equivalent to a return of goods; For the case of unfair return of goods, the practices include:

(a) A return of goods in an event of bulk purchase by an undertaking in wholesaling/retailing to gain a bulk discount from a producer or distributor but after a certain period of time has been lapsed and it is unlikely to be sold off, the undertaking requests a return later and such return is not a part of agreed conditions for return in normal trade practices;

(b) A return of goods in an event of renovation of premise(s) – outlet(s) or depot(s) – by an undertaking in wholesaling/retailing and it is necessary for goods in those outlet(s) or depot(s) to be relocated but goods are being return to a producer or distributor unduly;

(c) A return of goods in an event of an undertaking in wholesaling/retailing refuses to be responsible for damages from such return to a producer or distributor;

(4) An unfair use of consignment contract whereby an undertaking in wholesaling/retailing compels a producer or distributor to agree on a consignment contract with unfair terms and conditions in which a producer or distributor is being taken an advantage of significantly from normal trade practices on consignment sale or compels a particular producer or distributor to conclude a consignment contract instead of a sale contract as usual in order to gain benefits from the consignment contract as if it is the sale contract. The benefits from these two contracts are normally different;

(5) An unfair coercion to purchase or to pay fee whereby an undertaking in wholesaling/retailing coerces a producer or distributor to purchase specific goods or pay specific fees that benefitting the wholesaling/retailing undertaking itself in which increases expense(s) or cost(s) to the producer or distributor without due cause, such as:

(a) Coercing the producer or distributor to purchase goods, as a whole or a part thereof, from the undertaking without due cause;

(b) Coercing the producer or distributor to pay for advertising expense(s) to promote goods that mainly benefit(s) the wholesaling/retailing undertaking without due cause, for example, revenue earning from advertisement or overcharge of advertisement fee;

(c) Coercing the producer or distributor to purchase service(s), such as internet-base or electronic business information services (or business-to-business e-commerce: B2B e-commerce) in which burdening the producer or distributor without due cause;

(6) Soliciting an employee of a producer or distributor to operate without due cause whereby the producer or distributor do not give a consent or without prior agreement, for instance,

(a) Compelling a producer or distributor to assign an employee to be stationed at an undertaking's premise to assist the operations of the undertaking in which normally is responsibility of that undertaking to do so, in order to reduce expenses of the undertaking in wholesaling/retailing, except the followings:

1) The producer or distributor explicitly expresses its prior consent to the undertaking in wholesaling/retailing that it shall assign its employee(s) to sell its product(s), as well as to take responsibility of checking its inventory; in a case of assigning its employee(s) to a store of the undertaking in wholesaling/retailing, that employee(s) shall have sale techniques or other abilities that may directly beneficial for the producer or distributor;

2) The undertaking in wholesaling/retailing had an agreement with the producer or distributor to have the employee(s) of the latter to be assigned to the undertaking under prior agreed condition(s), such as job description, working hours, and period of assignment, and the undertaking is responsible for such assignment;

(b) Compelling a producer or distributor to pay for wage(s) of employee(s) of the undertaking in wholesaling/retailing;

(7) Refusal to take delivery of goods produced as a private brand or a house brand without due cause whereby, after an agreement between an undertaking in wholesaling/retailing and a producer or distributor to produce a specific goods under certain specifications – standard(s), form(s), or type(s), the undertaking in wholesaling/retailing refuses to take delivery of such goods, as a whole or a part thereof, without due cause, which is not producer's or distributor's fault, or without prior notice, except when the consent for such refusal has been explicitly expressed by the producer or distributor and the undertaking in wholesaling/retailing shall be responsible for damage from such refusal;

(8) Other unfair trade practices by an undertaking in wholesaling/retailing without due cause and may inflict damage to other, such as

(a) Delay in payment for goods, reduction of goods ordered, stop or not dealing with a producer or distributor, because a producer or distributor declined condition(s) imposed by the undertaking or a producer or distributor filed a complaint or is preparing to complaint an undertaking's conduct to a government agency;

(b) Delisting of goods without due cause or not corresponding with prior agreement;

(c) Using data or trade secret(s) or trading party's technology to produce goods in a house brand of the undertaking to compete with other goods;

(d) Other conducts in which considered as unfair trade practices whereby an undertaking in wholesaling/retailing do coerce, impose special condition(s), restrict, or prevent business operations of other undertaking(s) that may cause damage to those other undertaking(s).

This Notice is announced on 18 June B.E. 2562 (2019)

Sakon Varunyuwatana

Chairperson of The Trade Competition Commission