

(Translation)

**Outcome of Decision of Trade Competition Commission
In case of Unfair Trade the Conduction of Agricultural Product Buyers
MaeHongSon Province**

	Trade Competition commission	The Complainant
Between		
	Mr. Y	The Accused No. 1
	Mrs. J	The Accused No. 2

Complaint

Office of Provincial Commercial Affair Maehongson received a letter from Damrongdhama Center, Mae Sariang District Ref. Sor. 0218.1 / 008 complaining about a person who is a business operator which has market power, dated on March 16, 2018. The fact that the complainant suffered from Mr. N (Commission Merchant) who bought pumpkin products from the villagers, Mae Tob Tai, brought pumpkin seeds to the villagers to plant. When the harvest season, they must sell the pumpkin products to Mr. N at the specified price. The complainants and the pumpkin grower of Mae Tob Tai villagers cannot sell pumpkins to other merchants or any merchants will buy pumpkins, they have to buy at the specified price by Mr. N, which is unfairly excluded and monopolized. Office of Provincial Commercial Affair Maehongson had a letter Ref. Sor 0016/692, dated August 3, 2018 to Secretary- General of the Trade Competition Commission notified the above complaint, which may be considered an offense under the Trade Competition Act, B.E. 2560.

/Facts...

Facts

The facts that the complainant is a farmer who grows pumpkins and buy pumpkin seeds from general stores. It takes approximately 85 to 90 days to harvest. The complainant knew Mr. N who is an agent of the Accused No. 1 and No. 2 who are commission merchants, brought pumpkin seeds from the Accused No. 1 and No. 2 to cultivate other farmers. At the harvest season, farmers who took the seeds from Mr. N. The Farmers had to sell the pumpkins to the Accused No. 1 and No. 2, who will be purchased at a price lower than the purchase price of other merchants. Usually, when the harvest season of pumpkin products in Mae Tob Tai area, there are many pumpkin buyers to buy pumpkins from local farmers but during the 2018 planting season, the buyers disappeared from the area. The complainant called the buyers to buy pumpkins, but the merchants of Nakhon Ratchasima informed that the Accused No. 1 and No. 2 did not allow buying pumpkins at the Ban Mae Tob Tai area and if they are going to buy pumpkins, they have to buy at the specified price by the Accused No. 1 who set of the price. Previously, the complainant sold the pumpkins to the merchant who paid a good purchase price, but now he does not buy pumpkins anymore. The complainant sold the products to Ms. D who continued to buy pumpkins, but farmers who wanted to sell their products, had to bring pumpkins to the arboretum which is near the entrance to Ban Mae Tob Tai Village to avoid confrontation with the Accused No. 1 and No. 2.

The Facts that from farmers who plant pumpkins in Ban Mae Tob Tai area, including Mrs. B and Mrs. P listened accordingly buy cultivated seeds from a general stores. There have general buyers to buy in the area. The purchase price depends on the quality of the pumpkins which farmers are free to choose to sell to any buyer. Until the year 2017 - 2018, the Accused No. 1 and No. 2 bought pumpkins in the village and brought pumpkin seeds to some farmers to plant. The two parties did not allow other buyers from entering the village to buy pumpkins.

/It is claimed that...

It is claimed that the Accused No. 1 brought pumpkin seeds to the farmers and other buyers did not want to have a conflict with the two parties, so they did not to buy pumpkins in the village. There was only Mr. N, who received pumpkin seeds from the Accused No. 1 would be sold to the Accused No. 1 and used to be traded on a regular basis, Mr. N had never advised other farmers to take seeds from the Accused No. 1, but a neighbor farmer asked to divide the seeds to plant before dividing them as acquaintances. When the harvest season, he had to pay the seed money to Mr. N. Also, Mr. T bought the seeds from a store and received the seeds from the Accused No. 1 to plant and collected the seeds, which received from the Accused No. 1 who bought at a price lower than the purchase price of other buyers. Mr. T informed that the pumpkin will be sold to other buyers. The Accused No. 1 agreed to raise the price. In addition, Mrs. P gave the statement that agreed to sell pumpkins with the Accused No. 1, but Mrs. P accused the Accused No. 1 who taking advantage of the selection of pumpkins. Therefore, Mrs. P changed her mind and refused to sell the produce to the Accused No. 1 despite, having selected some of the pumpkins into the car that the Accused No. 1 has prepared.

As the fact that commission merchants who bought pumpkins in the MaeHongSon area, namely Mrs. A, Ms. K, Mrs. M, Mr. S, and Ms. D listened accordingly, buying pumpkins from farmers in the Ban Mae Tob Tai area. The buyers went to buy pumpkins in the area. To buy pumpkins, which were divided into grades, according to the weights of the pumpkins. The purchase price was determined from the destination market and destination buyers which were responsible for the shipping cost. The Pumpkin buyers had a variety of methods that gave pumpkin seeds to farmers to grow and depended on the farmers to decide which grew of pumpkin varieties because each area was popular to grow pumpkins different varieties. At present, some buyers have not gone to buy pumpkin from Ban Mae Tob Tai farmers because they do not want a conflict with the Accused No. 1 and No. 2. In addition, the fact that Ms. D had been threatened by the Accused No. 1 who did not allow Ms. D to buy pumpkin in the area and notified to the police blotter record as evidence at the Division KongKoi Police Station. According to the copy of the police blotter, dated on September 2, 2017, and around the end of October 2017, the Accused No. 1 threatened Ms. K. The Accused No. 1 and No. 2 did not allow other buyers to buy the pumpkins that causing damage to the buyer. In addition, the Accused No. 1 and No. 2 had a behavior of price reduction.

/The Accused No. 1...

The Accused No. 1 pleaded that the Accused No. 1 and No. 2 are husband and wife who work in trading and purchase agricultural products. They buy products in many areas and the purchased products will be sent to sell to the destination buyer in different provinces, where the purchase price will mainly use the purchase price of the destination product purchaser, the Accused No. 1 will buy cheaper than the destination purchase price 1 Baht per kilogram for operating expenses, such as labor cost, weighing fee and warehouse rental, etc. The purchase price of pumpkin each year that depending on the quantity and market demand, and the transportation expenses, depending on the distance, it depends on agreement but most of the time, the buyer at the destination will be responsible for the transportation. In 2018, the Accused No. 1 and No. 2 who set price the purchase price based on the quality and pumpkins size. According to, the purchase of pumpkins are not weighed at each pumpkin but they will assess the weight of the buyer's own expertise. If the farmers disagree, they will weigh the problematic pumpkin. In the part of the pumpkin seeds, the Accused No. 1 and No. 2 will take pumpkin seeds to many farmers at Ban Mae Tob Tai to plant. It is agreed that the harvest season, the pumpkins must be sold to only the Accused No. 1 and No. 2. The most farmers, who took the seeds, would not sell the pumpkin products to other buyers because it is recognized in the general purchase when calculating the pumpkin price products, the Accused No. 1 and No. 2 deduct the seed cost which the farmer takes them. A distributing pumpkin seeds to farmers at Ban Mae Tob Tai area, the Accused No. 1 and No. 2 assigned Mr. N who is an operator, the Accused No. 1 and No. 2 will pay compensation when farmers bring pumpkin products for sale. Mr. N will receive compensation according to the weight of pumpkin products at the rate of 20 satang per kilogram. Each year, the Accused No. 1 and No. 2 purchase pumpkin products in Ban Mae Tob Tai area around 40 tons per year, but in the year 2018 bought 20-30 tons because of the epidemic of pumpkin products. The Accused No. 1 and No. 2 have earned an income about x - x hundred thousand Baht. There are many buyers of pumpkin products like the Accused No. 1 and No. 2 in the Ban Mae Tob Tai area. The Accused No. 1 and No. 2 admitted that other buyers were not allowed for purchasing pumpkin products at the Ban Mae Tob Tai area or not allowed to buy at a high price (throw the price) because pumpkin seeds are brought to farmers to use in cultivation, and the Accused No. 1 called to threaten Ms. D, who bought

/pumpkin products,...

pumpkin products, misunderstood that Ms. D bought pumpkin products from farmers who took seeds from the Accused No. 1 and No. 2 but they did not know that motion commit offence under the Trade Competition Act, B.E. 2560 and in the future purchase of pumpkin products will be more careful.

The Accused No. 2 testified that the Accused No. 1 and No. 2 do not register marriage but living together as husband and wife for about 15 years. At the time to buy products from farmers, the Accused No. 1 and No. 2 together meet the farmers every time. The Accused No. 1 will negotiate a price to purchase products from farmers, including talks with other product buyers. The Accused No. 2 will pay cash to the farmers at the price that was negotiated by the Accused No. 1 and coordinates with the buyers at the destination market. The Accused No. 2 knew from the Accused No. 1, who asked a farmer, who sold his products to another buyer. The Accused No. 1 and No. 2 was mistaken that the farmer received the seed, which was supposed to sell the products to the Accused No. 1 and No. 2 but the farmer did not receive the seed from them. The Accused No. 1 was mistaken, the Accused No. 2 never knows that the Accused No. 1 had previously prohibited to purchase other agricultural product's buyers from acquiring pumpkin products in the area where they were to buy products. The Accused No. 2 has just known that the incident was informed by the competent official of the Office of the Trade Competition Commission, and the income, which was received by the purchase of agricultural products is considered to be the shared income of the family. There is no distributed among the Accused No. 1 and No. 2.

Issues of Decision

In this case, there are the issues of decision as follows:

1. The Accused No. 1 and No. 2 have acted in accordance with the complaint since the Trade Competition Act, B.E. 2542 which has been in effect. In case of having to use the Trade Competition Act, B.E. 2542 or The Trade Competition Act, B.E. 2560, enforcing the actions of the Accused No. 1 and No. 2.

/2. It is whether...

2. It is whether or not the Accused No. 1 and No. 2 are business operators of market power, and they use their power over the market to prohibit the purchaser of other agricultural products purchasing the products in the area where the Accused No. 1 and No. 2 received to purchase the products. This is an action which is prohibited under Section 50 of The Trade Competition Act, B.E. 2560.

3. It is whether or not the Accused No. 1 and No. 2 restrict the purchasers of other agricultural products to buy the products in the area where Accused No. 1 and No. 2 purchase the production. This is forbidden for business operators, who cannot do anything, which causes damage to other business operators under Section 57 of The Trade Competition Act, B.E. 2560.

Decision

The first issue to be diagnosed is the Accused No. 1 and No. 2 have acted according to the complaints that inferred from before September 2017, The Trade Competition Act, B.E. 2542 is still in effect, and continues after The Trade Competition Act, B.E. 2560 become effective until the Accused No. 1 admitted to the Special Task Force in the case of conduction of unfair competition's purchaser of agricultural products in the MaeHongSon area on August 18, 2020. In this case, The Trade Competition Act, B.E. 2542 or the Trade Competition Act, B.E. 2560 are enforced the actions of the Accused No. 1 and No. 2.

In this section, although the act of the Accused No. 1 and No. 2, who offence under The Trade Competition Act, B.E. 2542 when the Trade Competition Act, B.E. 2542 was repealed by Section 3 of The Trade Competition Act, B.E. 2560, the punishment was folded. However, the action that the Trade Competition Act, B.E. 2542 enacts as an offense still appear to be a prohibited action under The Trade Competition Act, B.E. 2560. In addition, The Office of Trade Competition Commission has received a letter of complaint after The Trade Competition Act, B.E. 2560 which is currently enforced the actions of the Accused No. 1 and No. 2.

It is whether or not in case of problem, the next issue must be considered that the Accused No. 1 and No. 2, as well as other agricultural product buyers, including farmers who cultivate and sell pumpkins, be business operators. Section 5: Under this Act:

/“business operator”...

“business operator” means a vendor, producer for sale, person who places an order or imports products into the Kingdom for sale, buyer for production or resale of goods, or service provider in the business. Therefore, the Accused No. 1 and No. 2, including Ms. D, Mrs. A, Mr. S, Ms. K, and Mrs. M, who have an career to buy pumpkins to be sold to the destination buyers in different provinces with the intention of profit from the difference between the purchase price and the sell price to buyers at the destination, which is an operation for trade benefit of agriculture, commerce is a business operator under Section 5 of the Trade Competition Act, B.E.2560. The farmers cultivate pumpkins to sell to the buyer, who buy the products for resale, it is an operation for the trade benefit of agriculture. Therefore, producer for sale is a business operator under Section 5 of The Trade Competition Act, B.E. 2560.

A problem is considered whether or not the Accused No. 1 and No. 2 are business operators who have market power, a consideration in this section must determine the district of the product market and the geographical market. This is considered that the Accused No. 1 and No. 2, and other product buyers bought pumpkins from farmers who planted pumpkins in the Ban Mae Tob Tai area, and two parties were accused of action forbidding other buyers to purchase products only in the case of purchasing pumpkin products. Therefore, in this case the district of the product market is pumpkins.

The geographical market district found that the area of Ban Mae Tob Tai, where the farmers grow pumpkins and two parties went to buy pumpkin products, are mostly valleys, and a transportation is inconvenient. Pumpkins is a plant that has a lot of weight per one. The farmers do not have their own transport vehicles which make impossible to carry products out to sell outside the MaeSariang district. Therefore, the district of Geographical Market is MaeSariang district at Mae Hong Son province.

The next issue that has to be considered is which market share and sales amount of the Accused No. 1 and No. 2. The fact that the information, which was received by MaeHongSon Provincial Commercial Office, obtained from the best investigation found that the overall the pumpkin production of MaeHongSon province in 2017. They had a cultivated area of 1,864 rai, a yield of 4,662.23 tons, worth 23,311,150 Baht and in 2018 the cultivated area was 1,997. 15 rai had a yield of 4,992,90 tons, worth 24,964,500 Baht

/and an all of...

and an all of the pumpkin production of MaeSariang district in 2017 with a planted area of 422,28 rai, yielding 1,055.70 tons, it is worth 5,278,500 Baht, and in 2018 there were a cultivated area of 541 rai, yielding 1,352.50 tons, worth 6,760,000 Baht. Therefore, there is assumed that all of pumpkin production in MaeSariang district at Mae Hong Son province in 2016, which had a trading value of less than one billion Baht, the Accused No. 1 and No. 2 notified that they purchased about 40 tons of pumpkin products at Ban Mae Tob Tai area per year, but in 2018, 20 - 30 tons were purchased due to the plague of pumpkin production. Each year, the Accused No. 1 and No. 2 will have income of approximately x - x hundred thousand Baht per year. The Trade Competition Commission considered that the Accused No. 1 and No. 2 had sales amounts in 2017, which was the year before the year they were accused of offenses not meeting the criteria of being a business operators with market power under Section 50 of the Trade Competition Act, B.E. 2560, including the announcement of the Trade Competition Commission regarding the rules of being a business operator with market power, dated October 4, 2018, that had sales amounts in the past year of above one billion Baht. This case was not required to determine the market share of two parties.

The final issue of problem is considered that the Accused No. 1 and No. 2 prohibited the other purchasers of other agricultural products from entering and purchasing products in the area where the Accused No. 1 and No. 2 bought products. It is whether or not a prohibition for the business operators to do anything which causes damage to other business operators under Section 57 of The Trade Competition Act, B.E. 2560. The first actions of the Accused No. 1 and No. 2, who reduced pumpkin products' price, which bought from farmers at the Ban Mae Tob Tai whether or not it is an unfair use of the superior bargaining power under Section 57 (2) of The Trade Competition Act, B.E. 2560.

The next issue is the actions of the Accused No. 1 and No. 2 who imposed the trade conditions which unfairly restrict or obstruct the business operation of others under Section 57 (3) of the Trade Competition Act, B.E. 2560. The Trade Competition Commission considered that Farmers who cultivate pumpkins at the Ban Mae Tob Tai include the Accused No. 1 and No. 2, Mrs. B, Mr. T and Mrs. P, and the pumpkin product buyers,

/namely...

namely Mrs. A, Ms. K, Mr. L , Mrs. M, Mr. S, and Ms. D who notified that during the 2018 planting season, two parties prohibited other agricultural product buyers who want to buy the pumpkin products from farmers in Ban Mae Tob Tai.

They claimed that farmers received the seeds from the Accused No. 1 and No. 2, and stipulated conditions forbidding the products to be sold to other buyers. Ms. K notified that around the end of October 2017, the Accused No. 1, who threatened her, prohibited to buy pumpkins at the Ban Mae Tob Tai area by claiming that the farmers received pumpkin seeds from the Accused No. 1 and No. 2 but Ms. K asked the farmer, instead of the farmers bought the seeds to plant by himself. The farmer did not receive any seeds from the Accused No. 1 and No. 2. Ms. D notified the Accused No. 1, who called to threaten Ms. D and prevented other buyers to buy pumpkin products from farmers at the Ban Mae Tob Tai area. Ms. D has to report this case to the investigation officer and record the police blotter as evidence at the KongKoi police station. The Accused No. 1 notified that he actually prohibited other buyers from purchasing pumpkin products at the Ban Mae Tob Tai area or bought at a high price (throw the price) because the Accused No. 1 and No. 2 brought pumpkin seeds to farmers to use in cultivation. In the case of the threaten of Ms. D, the Accused No. 1 notified that he actually called to threaten Ms. D because he misunderstood that Ms. D bought pumpkin products from farmers who took seeds from the Accused No. 1 and No. 2, but they did not know that the action is an offense under The Trade Competition Act, B.E. 2560. The actions of the Accused No. 1 and No. 2 caused Ms. K, Mr. S, and Mrs. A were damaged in the amount of 10,000 Baht, 10,000 Baht and 1,000 Baht, respectively. The Accused No. 1 and No. 2 were unfair acting to prevent other agricultural product buyers who purchased pumpkin products from farmers at the Ban Mae Tob Tai area. As a result, other agricultural product buyers could not purchase pumpkin products from farmers at the Ban Mae Tob Tai, and some other product buyers were damaged by the actions of the Accused No. 1 and No. 2.

The Accused No. 1 and No. 2 shall undertake any conduct resulting in damage on other business operators by unfairly setting trading conditions that restrict or prevent the business operation of others under The Trade Competition Act, B.E. 2560, Section 57(3). Including, Announcement of the Trade Competition Commission Subject: Guidelines for Considering Damage to Other Business Operators, B.E. 2561, dated October 4, 2018.

/Any person violating...

Any person violating shall be subject to an administrative fine of not more than 10 percent of the turnover in the year of offence under Section 82 of The Trade Competition Act, B.E. 2560.

In this case, the Accused No. 1 and No. 2 lived as husband and wife by a community is recognized. They have a child and a business operation, which purchasing pumpkin at MaeHongSon Province, they separate a responsible, the Accused No. 1 negotiates the purchase price including talking with other agricultural product buyers, and the Accused No. 2 will pay the farmer and coordinate with the buyers at the destination market. All income, which generates from the trade and purchase of agricultural products, is considered family income. They do not separate an income. The Accused No. 1, who is a husbands' the Accused No. 2, violated threatening other agricultural product buyers. The Accused No. 2, who is a wife, the fact that she accompanied with the Accused No. 1, went to meet the farmers buying the product but the Accused No. 1 only negotiated purchasing price. The Accused No. 2 was responsible for paying the farmers, who sell their products, and coordinated with the buyers purchasing at the destination market. The Accused No. 2 is not aware of the Accused No. 1 has specified conditions

The farmers, who purchased seeds, are restricted from selling their product to other buyers, including the Accused No. 1 threatened to restriction other pumpkin buyers and any conduct resulting in damage on other business operators, the total value is approximately 21,000 Baht. They violated the law under Section 57 of The Trade Competition Act, B.E. 2560. In addition, all income was taken by trading and purchasing of agricultural products, is considered family income. The Accused No. 1 and No. 2 do not separate an income when they have to combine income and expenses in 2017, which was the year of the offensive, is approximately xxx, xxx Baht. Under Section 82 of The Trade Competition Act, B.E. 2560 “ Any person violating Section 57 shall be subject to an administrative fine of not more than 10 percent of the turnover in the year of offence”. In this case, the amount of the fine is not more than 50,000 Baht, but the Accused No. 1 and No. 2 accepted the guilt and cooperated as well. This is the first of violating, therefore The Trade Competition Commission reduces a half of the fines. The remaining amount is 25,000 Baht and is deemed appropriate to order an administrative fine for the Accused No. 1.

/In this regard,...

In this regard, the imposition of an administrative fine for the Accused No. 1 who is considered to combine an income of the Accused No. 1 and No. 2 and also punishment conducted of the mandatory conditions and the threatening of the Accused No. 1. The Accused No. 1 is only punished, therefore the punishment is the administrative fine, which appropriates to the case of circumstance and the offensive.

Resolution of the Trade Competition Commission

The Trade Competition Commission passes a unanimous resolution that the acts of Mr. Y who is the Accused No. 1, is deemed to be those violating Section 57 (3) of the Trade Competition Act, B.E. 2560 as coupled with the Notification of the Trade Competition Commission regarding Announcements of Trade Competition Commission, subject Announcement of the Trade Competition Commission Subject: Guidelines for Considering Damage to other Business Operators, B.E. 2561, dated October 4, 2018 and it is deemed appropriate to impose an administrative fine on the first accused person in the amount of 25,000 baht.

The Trade Competition Commission