

LEGAL
ALERT**Thailand**
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More Active Enforcement of Thailand's Trade Competition Law

Since the new Trade Competition Act B.E. 2560 (2017) (the “TCA”) came into force on 5 October 2017, the TCA is the main legislation regulating business operators (the “Operator”) in Thailand on issues of free and fair trade competition purposes.

With the repeal of the Trade Competition Act B.E. 2542 (1999), the TCA established the new Office of Trade Competition Commission (the “OTCC”), an independent agency that has the power to order the Operator to suspend, cease, or rectify any action for the prevention of monopolies and unfair trade practices.

The TCA prescribes for restriction on the actions of the Operator, either on themselves or with other Operators. Examples of such restrictions includes situations where the Operator with a dominant market position is restricted from fixing unfair conditions requiring another Operator who is trade partner to restrict services, production, purchase or distribution of goods or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credit from other Operator or unreasonable intervening the operation of business of other Operator, etc. Any violations of the TCA by the Operator is punishable by a criminal and/or administrative penalties.

Recent enforcement under the TCA

In August 2019, in a milestone ruling the M-150 Company Limited was fined THB12 million by the OTCC on the grounds that they had prohibited their agents from selling other energy drink products. M-150 Company Limited threatened that they will cease to supply their products to agents who fail to comply with such requirement. During the investigation, the OTCC found that M-150 Company Limited is in a dominant position in the energy sales market as they controlled more than 50% of the market sales. As such, OTCC considered this action to be unreasonable as it had caused damage to the agents. The fine was imposed on M-150 Company Limited for using market dominance to restrict fair competition.

Recently on 9 January 2020, the OTCC issued a ruling on the Toyota case. In this case, Toyota Motor Thailand Co., Ltd. (“Toyota”) had circulated a notification to all of its agents to prohibit the sale of the “Toyota Corolla Altis Hybrid” model where it was for modification as a taxi car. Furthermore, Toyota had prohibited its agents from selling Toyota’s cars out of his or her designated territorial market. The OTCC reasoned that this did not violate the TCA as:

- the prohibition of sale, where it was for the modification of the cars as taxi cars, was to preserve the brand’s image which is for the purpose of maintaining the position of the product and satisfying customers; and
- Toyota’s agents were prohibited to conduct their business or marketing activities outside of their territorial market, but customers were not restricted in buying the products in different territorial markets.



Outcome of OTCC's rulings

Although the TCA does not explicitly provide for exceptions to the prohibitions under the act, given the ruling in Toyota's case, we can observe that where it is for the preservation of the position and image of a product and customer satisfaction, which may restrict some Operators' trade opportunities, the OTCC can rule such restriction as a fair trade practice. The ruling also reflects that if such conditions were not made to restrict customers or is against customer's rights, such conditions will not likely be deemed as an unfair condition that causes damage to other Operators and will not likely violate the provisions of the TCA. In addition, the Toyota's case also implies that the OTCC can use their discretion on a case by case basis in deciding on the extent and exception of the interpretation of the TCA.

Conclusion

Moving forward, the OTCC, as an independent organisation, will probably become more active and adopt proactive measures when exercising their power. This could be seen from OTCC's announcement on 17 January 2020 where they warned prospective buyers of Tesco Lotus business in Thailand that they would need to seek OTCC's permission before going ahead with any sale transaction. In addition, OTCC is constantly promoting the concept of fair trade competition practices and encourage business operators to complain against unfair trade practice to the OTCC. We will see more rulings on the interpretation and implementation of TCA in Thailand in 2020.

If you have any questions or require any additional information, please contact **Threenuch Bunruangthaworn**, **Archaree Suppakrucha** or **Panwadi Maniwat** of ZICO Law Thailand or the partner you usually deal with.

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