

TRADE COMPETITION ACT
B.E. 2560*

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun
Endorsed by Royal Prerogative on 2 July B.E. 2560
in the Second Year of the Current Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun decrees that:
as it is appropriate to improve the law on trade competition,

His Majesty King has therefore gracefully endorsed this Act, on the advice and approval of the National Legislative Assembly performing its parliamentary duty, as follows:

Section 1: This Act is entitled the “Trade Competition Act B.E. 2560”.

Section 2: This Act shall be effective 90 days from the date of its publication in the Government Gazette.

Section 3: The Trade Competition Act B.E. 2542 shall be repealed.

Section 4: This Act shall not apply to the operation of the followings:

- (1) central, regional, or local administrations;
- (2) state-owned enterprises, public organizations, or other government agencies, provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities;
- (3) 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;
- (4) businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters.

Section 5: Under this Act:

“business” means an operation carried out for benefit of trade in agriculture, industry, commerce, finance, insurance, and services, and shall include other operations as prescribed in any ministerial regulation(s);

* This unofficial English translation of the Trade Competition Act B.E. 2560 has been prepared by the Office of Trade Competition Commission and does not have any legal effect. The OTCC publishes it only for the purpose of reaching to the wider public. Any interpretation and implementation of the Trade Competition Act shall be based on the Thai-language version.

“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;

“good” means an object used for commodity or consumption, including a document demonstrating rights in such object;

“service” means a procurement of work by way of commission, grant of any right or permission to use or take benefits of any property or any operation in return for monetary remuneration or other benefit, but shall not include labor employment;

“price” means a price of a good and shall include a remuneration for service provision;

“market” means a relevant market of goods or services which are of the same type or substitutable when considering qualifications, prices, or purposes of use of the goods or services and the area where such goods are sold or such services are provided;

“business operator with a dominant position of market power” means one or more business operators in a market who have a market share and sales revenue in excess of the thresholds prescribed in the Commission’s notification and one or more factors on competition conditions, as the case may be, shall be taken into consideration. The Commission shall review the market shares and sales revenue thresholds at least once every three years from the date of issuance of the notification.

In determining the market share and sales revenue of a business operator with a dominant position of market power, the market shares and sales revenue of all the business operators related to each other due to a policy or commanding power as prescribed in the Commission’s notification shall be taken into consideration. Such business operators having market shares and sales revenues, as per above, shall be considered business operators with a dominant position of market power;

“Factors on competition conditions” means the number of business operators in the market, an amount of investment money, accessibility to important production factors, distribution channels, business operation networks, necessary infrastructure for the business operation, governmental rules and regulations, and other factors prescribed in the Commission’s notification;

“Commission” means the Trade Competition Commission;

“Commissioner” means a Trade Competition Commissioner;

“Office” means the Office of the Trade Competition Commission;

“Secretary-General” means the Secretary-General of the Trade Competition Commission;

“Officer” means the Secretary-General, and official of the Office holding a position not lower than a civil servant at the practitioner level and appointed by the Commission in order to perform duties under this Act;

“Minister” means the Minister in charge of this Act.

Section 6: The Minister of Commerce shall be the Minister in charge of this Act and shall have the power to issue ministerial regulations to fix fees not exceeding the amounts indicated in the Annex to this Act. The Minister shall also have the power to reduce or exempt fees and determine any other operational requirements in order to implement this Act.

Such ministerial regulations shall be effective on publication in the Government Gazette.

CHAPTER 1 TRADE COMPETITION COMMISSION

Section 7: There shall be a Commission called the “Trade Competition Commission” consisting of a Chairperson, a Deputy Chairperson, and other five Commissioners, appointed by the Prime Minister from persons chosen in a selection process and approved by the Cabinet.

The Secretary-General shall be the secretary to the Commission.

Section 8: Each Commissioner shall be a person who has achievements or has performed duties that demonstrate that he or she has requisite knowledge and has expertise and/or experience of not less than ten years in one or more of the following fields including, law, economics, finance, accounting, industry, business administration, consumer protection, or other fields which benefit competition regulation. The period of experience in these fields may be considered cumulatively.

Section 9: Each Commissioner shall possess the following qualifications:

- (1) possess Thai nationality;
- (2) be forty years of age or more, but not exceeding seventy years of age;
- (3) not hold any political position;
- (4) not hold any position in a political party;
- (5) be of sound mind;
- (6) be free of drug addiction;
- (7) not be bankrupt or not have any prior bankruptcy due to corruption;
- (8) not be incapacitated or person under disability;
- (9) not be under any sentence of imprisonment, or in custody based on a court order;
- (10) not have been sentenced to imprisonment, or have been acquitted less than five years prior to the date his or her name is submitted to the Cabinet for an approval under Section 12(3), except for an offense committed with recklessness or a petty offence;

(11) not have been sentenced or deemed by a court order to have his or her properties vested in the State due to irregular wealth or an abnormal increase of properties;

(12) not have been fired, discharged or dismissed from duty in the civil service, a government agency, a state-owned enterprise, or a private agency due to corruption in performing duties, or severely atrocious conduct, or for reasons related to a corrupt action or unlawful conduct in government service;

(13) not be a Justice in the Constitutional Court, an Election Commissioner, an Ombudsman, a National Anti-Corruption Commissioner, an Auditor General Commissioner, or a National Human Rights Commissioner;

(14) not have been removed from a position under any organic law created under the Constitution for the prevention and suppression of corruption.

Section 10: In addition to the qualifications under Section 9, each Commissioner shall:

(1) not hold any position in a business entity, nor be a partner with management power in a partnership, nor hold more than five-percent share in the total capital of any company;

(2) not hold a position as a civil servant with a title or a regular salary;

(3) not hold a position as an official or employee of a government agency or local administration, or be a committee member or advisor to a government agency which operates a business;

(4) not hold any position in an institution or association as a group of business operators with common objectives or joint benefits in trade.

In case that a person chosen under Section 12 is a person holding any position under paragraph 1, the Prime Minister shall appoint that person only when he or she resigns from such position, which shall be done within 30 days from the date of selection. If that person does not resign within the time period required, it shall be deemed that such person has never been selected as a Commissioner. The selection of a Commissioner to replace such person under Section 12 shall then be undertaken.

Section 11: In the process of appointing Commissioners, there shall be a Selection Committee comprising the following nine members whose duty is to choose suitable persons among candidates to be proposed as Commissioners:

(1) Permanent Secretary of the Ministry of Finance;

(2) Permanent Secretary of the Ministry of Agriculture and Cooperatives;

(3) Permanent Secretary of the Ministry of Commerce;

(4) Permanent Secretary of the Ministry of Justice;

(5) Permanent Secretary of the Ministry of Industry;

(6) Secretary-General of the National Economic and Social Development Board;

(7) Secretary-General of the Consumer Protection Board;

(8) Chairperson of the Thai Chamber of Commerce; and

(9) Chairperson of the Federation of Thai Industries.

The Selection Committee shall select one Selection Committee member to be Chairperson of the Selection Committee.

The Chairperson of the Selection Committee and Selection Committee members shall have no right to apply for a Commissioner position.

The Office shall act as an administrative unit for any operational support required in the Commissioner selection process.

The Chairperson and other Selection Committee members shall be entitled to a remuneration and other expenses in their performance of duties as prescribed by the Cabinet.

Section 12: The selection and appointment of Commissioners shall be performed as follows:

(1) The Selection Committee shall call for applications from persons who have achievements or performed any duties that demonstrate that he or she possesses the requisite knowledge and has the required expertise or experience in accordance with Section 8, including having the qualifications specified under Sections 9 and 10. The call for applications shall be announced to the general public for no less than 30 days continuously.

(2) After the time period under (1) has passed, the Selection Committee shall consider choosing applicants with the required qualifications to become Commissioners to fill the number of available Commissioner positions in accordance with Section 7 and shall propose a list of selected persons to the Minister with the details concerning such persons indicating clearly or containing grounds to demonstrate that those persons are suitable in one of the areas listed under Section 8, as well as qualifying under Sections 9 and 10.

(3) The Minister shall submit the names of selected persons with details as specified in (2) to the Cabinet within 15 days from the date on which he receives the candidates' names from the Selection Committee for approval.

(4) When the Cabinet approves persons to fill the positions of Commissioners, it shall submit names to the Prime Minister for an appointment order for the Commissioners.

In the case where the Cabinet approves Commissioners but does not meet the required number of Commissioners to be appointed, the Selection Committee shall consider selecting persons to fill in such open positions by proceeding under (1), (2), (3), and (4) until all the positions are filled.

On appointing Commissioners for the first Commission, after the Cabinet has approved the names of persons to fill all the available positions, it shall be required that those persons then convene and choose among themselves a Chairperson and a Deputy

Chairperson for the Commission before a submission to the Prime Minister for an appointment order is made!

The time period, rules, procedure, and conditions for selecting Commissioners shall be prescribed in a ministerial regulation.

Section 13: Each Commissioner shall hold office for a four-year term and shall only hold office for two terms.

After two years, three Commissioners shall resign their positions in the first Commission by means of a draw. Such resignations by means of a draw shall be deemed resignations and end the terms of the positions.

The Commissioners who are resigned at the end of term of their office shall hold their positions in order to perform their duties until the appointment of new Commissioners is made.

Not less than 90 days before end of term of the office of a Commissioner, the Selection Committee shall rapidly proceed to select a person appropriate to be appointed as a new Commissioner.

Section 14: Other than resignation at the end of term of an office, a Commissioner shall be removed from the position due to one of the following reasons:

- (1) death;
- (2) resignation during a term;
- (3) the Cabinet's resolution to remove a Commissioner due to failure to fulfill his or her duty, atrocious behavior, or lack of capacity to perform duties;
- (4) deemed unqualified under Section 9;
- (5) violating Section 10.

When a Chairperson, a Deputy Chairperson, or a Commissioner is removed from their position due to any one of the situations as stipulated under paragraph one, the process of selection and appointment of a Chairperson, a Deputy Chairperson, or a Commissioner, in accordance with Section 12, shall be undertaken in order to fill that vacant position. The person appointed to fill that position shall serve in the office for the remaining term of the Commissioner being replaced. If the remaining office term is fewer than 90 days, the appointment process of a replacement commissioner for the remaining period of the office may be disregarded.

During the period wherein a Chairperson, a Deputy Chairperson, or a Commissioner under paragraph two has not been replaced, the other serving Commissioners shall perform their duties, and it shall be deemed that the Commission consists of a Chairperson, a Deputy Chairperson, or Commissioner as remained unless the remaining in the Commission is less than four persons.

Section 15: In case a Chairperson or a Deputy Chairperson resigns from his or her position under Section 13 and there is a new Commissioner appointed, or in case a

Chairperson or a Deputy Chairperson resigns from his or her position under Section 14, the Commission shall select one Commissioner to be Chairperson or Deputy Chairperson and shall submit this recommendation to the Prime Minister to request the issuance of an order to appoint such recommended person as Chairperson or Deputy Chairperson, as the case may be.

Section 16: The person resigning from the position of Chairperson, Deputy Chairperson, or Commissioner shall not take any position in any limited company, public limited company, or any other business which is a party under the consideration of the Commission for any matter, unless he or she has resigned from the position for not less than two years.

Section 17: The Commission shall have the following powers and duties:

- (1) to make recommendations to the Minister in issuing ministerial regulations pursuant to this Act;
- (2) to issue regulations or notifications for the performance of duties under this Act;
- (3) to regulate business operations and impose guidelines to maintain free and fair competition;
- (4) to consider complaints and make inquiries regarding offences under this Act;
- (5) to consider and make decisions on requests under Section 59;
- (6) to impose regulations on investigation and inquiry undertaken by sub-committees of inquiry;
- (7) to notify the appointment of officers to perform duties under this Act;
- (8) proceed with criminal cases according to a complaint of injured persons under Section 78;
- (9) to consider and impose administrative fines under Section 80, Section 81, Section 82, and Section 83, as well as to file lawsuits in administrative courts;
- (10) to invite any person to provide factual information, explanation, recommendations, or opinions;
- (11) to propose opinions and recommendations to the Minister and the Cabinet with regard to the government's policies on competition;
- (12) to give recommendations to government agencies on rules, regulations, or orders which are obstacles to competition and causing obstruction, restriction, or reduction of competition, and that may result in unfairness between business operators;
- (13) to determine plans, strategies, and guidelines on management of the Office;
- (14) to issue regulations or rules regarding organizational structure, personnel management, budgeting, finance, and property and other operations of the Office;
- (15) to perform other duties as the law prescribes as powers and duties of the Commissioners.

Generally applicable regulations or notifications shall take effect when they are published in the Government Gazette.

Section 18: The Commission shall provide for a procedure for receiving opinions from interested persons and the general public. These opinions shall be considered before the issuing of regulations or notifications on competition that are to be generally applicable. Information on matters and issues open for public opinion shall be provided. The period for receiving opinions shall not be less than 30 days, unless there is an emergency or an urgent necessity, for which the Commission may impose a time period of less than 30 days.

The Office shall provide a record summarizing the opinions received, consisting of information on opinions received, and a resolution or outcome of the Commission's considerations that responds to the received opinions as well as reasoning and further guidelines on the matter. Such a record shall be made available through the information network of the Office.

Section 19: Meetings of the Commission shall be attended by no less than half of the entire number of Commissioners, to establish a quorum.

In meetings of the Commission, if the Chairperson does not attend a meeting or is unable to perform his or her duties, the Deputy Chairperson shall chair the meeting. If the Deputy Chairperson does not attend the meeting or is unable to perform his or her duties, the meeting shall select one Commissioner to chair the meeting.

The decisions of meetings shall be based on a majority vote and each Commissioner shall have one vote. If the voting ends in an equal number of votes for and against a matter under consideration, the Chair of the meeting shall have a deciding vote to make a final decision.

Section 20: The Commission shall have the power to appoint a sub-committee to consider or implement any task assigned by the Commission.

Section 21: The Commission shall appoint one or more sub-committees of inquiry. Each sub-committee shall consist of persons with knowledge and experience related to criminal cases to be appointed, including a person who is or was a district attorney, a person who is or was a policeman, a person who is or was a government officer with knowledge and experience in economics, law, commerce, accounting, or other fields deemed necessary to be members of the sub-committee of inquiry being created. An officer shall be assigned as a member of and secretary to any sub-committee of inquiry. Any sub-committee of inquiry created shall have an initial meeting to select one member to be its Chairperson.

Sub-committees of inquiry shall have powers and duties to investigate and inquire about matters regarding an offence under this Act. When a sub-committee of inquiry considers that the inquiry process has been completed, it shall provide for an opinion along with a report to be submitted to the Commission within twelve months from the date the

Commission appoints that sub-committee. In any case of justified necessity, an extension shall be given for no more than six months by the Commission. The reasons underlying the necessity for such an extension shall be recorded.

Section 22: Section 19 shall apply, *mutatis mutandis*, to meetings of sub-committees and sub-committees of inquiry.

Section 23: The Chairperson, Deputy Chairperson, and Commissioners shall work full-time with remuneration, expenses for performing duties, and other benefits, as prescribed by the Cabinet. In determining remuneration, the prohibition on holding particular positions after a term of office under Section 20 and Section 21 shall be taken into account.

Remuneration and other expenses incurred in the performance of duties of the chairpersons of sub-committees and members of sub-committees under Section 20 and Section 21 shall be prescribed by the Cabinet.

Section 24: In performing duties under this Act, the Chairperson, Deputy Chairperson, Commissioners, and members of any sub-committees of inquiry shall be officers under the Criminal Code and shall have the powers and duties of inquiry held by officers under the Criminal Procedure Code.

Section 25: In a case where the Commission has reached an opinion that it should file a criminal suit and has submitted its opinion with its inquiry report to a district attorney, but the district attorney issues a non-prosecution order, the Commission may oppose the district attorney's non-prosecution order pursuant to the Criminal Procedure Code, and the Chairperson shall utilize the powers of the Commissioner General or a governor of a province, as the case may be.

In a case where the Chairperson opposes the district attorney's order, the inquiry report along with its opinion shall be submitted to the Attorney-General to consider. If the Attorney-General considers that the inquiry report along with the opinion that the Chairperson submits is not sufficiently complete to proceed with the case, the Attorney-General shall notify the Commission for its further consideration by indicating the areas where the details are incomplete at one time. In this case, the Chairperson and the Attorney-General shall jointly establish a working group, consisting of an equal number of representatives from each side with powers and duties to consider any incomplete evidence and gather additional evidence in order to make it complete to proceed with its submission to the Attorney-General to order a prosecution.

The Office shall operate as the secretariat of the working group under paragraph two.

Section 26: Criminal lawsuits and civil lawsuits for damages under this Act shall be under the jurisdiction of the intellectual property and international courts.

CHAPTER 2

OFFICE OF TRADE COMPETITION COMMISSION

Section 27: The Office of Trade Competition Commission shall be established as a government agency, which is not part of the civil service, nor a state-owned enterprise, but shall have the status of a legal person.

The operation of the Office shall not be subject to labor protection law, labor relations law, social welfare law, or workmen's compensation law. However, officials and employees of the Office shall receive benefits no less than those prescribed in the labor protection law, social welfare law, and compensation money law.

Section 28: The Office shall have its headquarter in Bangkok or other nearby provinces, and may establish branch offices in any other places.

Section 29: The Office shall have the following powers and duties:

(1) be responsible for the administrative work of the Commission and its sub-committees;

(2) to monitor business operators for violations of this Act and report the same to the Commission;

(3) to study, research, analyze, and research goods, services and working conducts in business operations, as well as to make recommendations on trends and provide opinions to promote, develop, and assist to regulate business operations;

(4) to establish a database on the size of goods or service markets that have a tendency to create market monopolies, as prescribed by the Commission, and make such database available to the general public;

(5) to receive complaints in which a person alleges that there is a violation of this Act. Then, it shall seek all factual information and gather evidence on such complaint to a sufficient degree in order to submit that matter to the Commission. This shall be conducted in accordance with a regulation prescribed by the Commission;

(6) to hold a title, possessory right, or other rights in properties;

(7) to establish a right or enter into any legal act with regard to property;

(8) to exchange information, participate in negotiations, make an agreement and cooperate with other entities or agencies both in and outside the country with regard to matters related to the Office's operation;

(9) to provide for or cooperate with other entities on training and knowledge development with regard to competition matters;

(10) to coordinate and cooperate with other civil service offices and government agencies relevant to the performance of duties under this Act;

(11) to receive fees, as prescribed by the law, as well as remunerations, service charges, or income from its operation;

(12) to disseminate the outcome of matters considered by the Commission to the general public;

(13) to produce an annual report demonstrating the results achieved and challenges met by the Commission and the Office, which shall be provided to the Cabinet and disseminated to the general public;

(14) to perform duties pursuant to notifications, regulations, the Commission's resolutions, and duties assigned by the Commission or its sub-committees;

(15) to perform any other function that the law prescribes as powers and duties of the Office.

Section 30: The Office shall have a Secretary-General who is responsible for the operation of the Office, and he or she shall report directly to the Chairperson, and shall be a supervisor of all officials and employees of the Office.

The Secretary-General shall be the representative of the Office in external matters related to the Office's operation. The Secretary-General may assign his or her power to any person to act on his or her behalf. This shall be pursuant to a regulation prescribed by the Commission.

Section 31: The Chairperson, by the Commission's approval, shall be the person with the power to appoint and/or remove the Secretary-General from the Office.

The criteria and method for opening applications, selection, and appointment of the Secretary-General shall be in accordance with a notification prescribed by the Commission.

Section 32: A person to be appointed as the Secretary-General shall possess the following qualifications:

- (1) possess Thai nationality;
- (2) be no more than sixty-five years of age;
- (3) be able to work full-time for the Office;
- (4) have knowledge and expertise in the field of law, economics, finance, accounting, industry, business administration, consumer protection, or other related fields as prescribed in the Commission's notification;
- (5) other qualifications as prescribed in the Commission's notification.

Section 33: A person falling into one of the following categories shall be prohibited to from appointment as Secretary-General:

- (1) be bankrupt or have any prior bankruptcy due to corruption;
- (2) be incapacitated or person under disability;
- (3) be under any sentence of imprisonment, or in custody based on a court's order;
- (4) have been sentenced to imprisonment except for an offense committed with recklessness or a petty offence;

(5) be a member of a board of directors, manager, or authorized person in an administrative or management role of a limited company or public limited company or other business governed by this Act;

(6) be a government officer, official, or employee in the civil service, a state-owned enterprise, or other government agency, or local administration;

(7) be or have been a person holding a political position, except if he or she resigned from such a position no less than one year;

(8) be or have been a committee member or holding other positions in a political party or be an official of a political party, unless he or she resigned from such position or positions no less than one year;

(9) have been fired, discharged or dismissed from duty in the civil service, a government agency, a state-owned enterprise, or a private agency due to corruption in performing duties, or severely atrocious conduct, or for reasons related to a corrupt action or unlawful conduct in government service;

(10) have been sentenced or deemed by a court order to have his or her properties vested in the State due to irregular wealth or abnormal increase of properties;

(11) be a person holding any position in an institution or association which is a group of business operators with common objectives or joint benefits in trade.

Section 34: The Secretary-General shall receive a salary and other remunerations as prescribed by the Commission. In determining the salary, the prohibition on holding particular positions after resigning from the Secretary-General's position under Section 43 shall be taken into account.

Section 35: The Secretary-General shall hold a term of four years.

A Secretary-General that resigns from the position in accordance with the end of the term, may be reappointed; however, he or she shall not hold the position for more than two terms.

Section 36: Other than resigning from the position in accordance with the end of the term, the Secretary-General may be removed from the position due to the following situations:

(1) death;

(2) voluntary resignation;

(3) lack of qualifications under Section 32, or falling into a prohibited category under Section 33;

(4) have a conflict of interest as set out in Section 41;

(5) be subject of a Commission's resolution to remove the Secretary-General due to failing to perform his or her duties, unfit conduct, or lack of capacity.

Section 37: There shall be deputy secretary generals according to the number the Commission prescribes in order to assist the Secretary-General's performance of duties, as assigned by the Secretary-General.

Section 38: The Secretary-General shall have the following powers and duties:

(1) to assign, appoint, remove, promote, demote, reduce a salary or wage of, punish officials and employees under disciplinary rules as well as discharge them from their positions as officials or employees. This shall be in accordance with rules prescribed by the Commission. If the matter involves an official at the level of Deputy Secretary-General, or high-level executives, or an internal auditor, an approval from the Commission shall be required;

(2) to set regulations on the operation of the Office that are not in conflict or in contradiction with rules or resolutions prescribed by the Commission;

(3) to perform any other function that the law prescribes as a power and/or duty of the Office.

Section 39: In performing his or her duties, the Secretary-General may assign powers to an official to act on his or her behalf pursuant to a rule prescribed by the Commission.

The person assigned under paragraph one shall have the same powers and duties as those of the Secretary-General in the matter assigned to him or her.

Section 40: In case there is no person holding the position of Secretary-General or such person cannot perform his or her duties, the Commission shall appoint a Deputy Secretary-General to be the acting Secretary-General. In case there is no Deputy Secretary-General or such person cannot perform his or her duties, the Commission shall appoint an official of the Office to be the acting Secretary-General.

An acting Secretary-General under paragraph one shall have the same powers and duties as those of the Secretary-General.

Section 41: The Secretary-General shall not have a conflict of interest in legal acts carried out by the Office or in a business operation carried out for the Office, whether directly or indirectly, except for the case where he or she is a shareholder for benefits of a good faith investment in limited companies or public limited companies that have undertaken such acts with a conflict of interest. Such shareholding shall not exceed the rates imposed in the Commission's rules.

In any case where the Secretary-General's parents, spouse, children, or spouse's parents undertakes such shareholdings under paragraph one, the Secretary-General shall be deemed to have a conflict of interest under paragraph one.

Section 42: Any legal act or business operation not conducted in accordance with Section 41 shall not be binding for the Office.

Section 43: A person resigning from his or her position as Secretary-General shall not take any position in any limited company, public limited company, or any other businesses which is a party in a matter being considered by the Commission, unless he or she has resigned from the position for not less than two years.

Section 44: Money and properties for the operation of the Office shall be comprised of the followings:

- (1) money and assets transferred to the Office under Section 91;
- (2) money the Government allocates as initial capital;
- (3) general subsidized money allocated by the Government;
- (4) fees, compensation, service charges, or other income from the operation;
- (5) donated money and assets or subsidized money from a foreign country as well as international organizations. There shall not be any condition or commitment agreed that may affect the operation of the Commission or the Office;
- (6) interest or other benefits accruing from the Office's money or assets.

Section 45: All the income that the Office receives from its operation each year shall be vested in the Office for its operating expenses and other appropriate charges, such as maintenance and other charges to offset depreciation, benefits to the Commission and its sub-committees, and money to be held in reserve for the operation or for use for other matters relevant to the functioning of the Office.

Income under paragraph one shall not be transferred to the Ministry of Finance as the State's income.

In the case that Office's income is insufficient to cover its expenses and ensure the efficient operation of the Office and cover other appropriate charges, and funds from other sources are unavailable, the Government shall allocate government budget to the Office in the necessary amount, as general subsidized money under Section 44(3).

Section 46: The Office shall transfer administrative fines collected under this Act to the Ministry of Finance as the State's income immediately after the statute of limitation ends for filing a lawsuit or after the court has issued a final judgment, whichever the case may be.

Section 47: For the benefit of allocating the government's budget to the Office under Section 44(3), the Office shall propose a budget for the fiscal year for which the Office seeks support to the Cabinet in order to seek an allocation of general subsidized money for the Office in the draft Annual Expense Budget or the draft Additional Expense Budget, as the case may be.

Section 48: Properties of the Office shall not be subject to any liability under compulsory executions, and no person may raise a statute of limitation against the Office on matters relating to properties of the Office.

Section 49: The Office shall establish a financial statement and accounts for the operation of the Office to be submitted to an account auditor within 120 days from the end date of the fiscal year.

In every fiscal year, the Office of the Auditor-General of Thailand shall be an account auditor and assessor of expenses of money and properties of the Office with an analysis of effectiveness of the expenses and an opinion as to whether such expenses are in accordance with as well as are used to achieve the purposes and objectives of the Office. A report shall be made and submitted to the Commission, the Cabinet, and the Parliament.

The Office shall be an audited unit under the organic law to the Constitution on the auditing and control of public finance.

CHAPTER 3

PREVENTION OF MONOPOLY AND UNFAIR TRADE

Section 50: A business operator shall not apply its dominant position in a market in any of following ways:

(1) by unfairly fixing or maintaining the level of purchasing or selling price of a good or service;

(2) by imposing an unfair condition for another business operator which is its trading partner in order to limit services, production, purchase, or sale of goods, or to limit an opportunity in purchasing or selling goods, receiving or providing services, or seeking credits from other business operators;

(3) by suspending, reducing, or limiting service provision, production, sale, delivery, importation into the Kingdom without any appropriate reason, or destroying or damaging goods for the purpose of reducing the quantity to be lower than demand of the market;

(4) by intervening in the business operation of others without any appropriate reason.

Section 51: Any business operator conducting a merger which may substantially reduce competition in a market under the criteria prescribed in the Commission's notification shall notify the outcome of such merger to the Commission within 7 days from the date of merging.

Any business operator planning to conduct a merger which may cause a monopoly or result in a dominant position in a market, shall seek permission from the Commission.

The notification under paragraph one shall indicate the minimum amount of market share, sales revenue, capital amount, number of stocks, or assets to which business operators shall be subject.

Mergers shall include:

(1) Mergers among producers, sellers, producers and sellers, or service providers, resulting in one business remaining and the others' business terminating, or a new business coming into existence;

(2) Acquisition of all or part of the assets of other business in order to control its policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

(3) Acquisition of all or part of the stocks of the other business, whether directly or indirectly, in order to control policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

Notification of outcome of a merger under paragraph one, and a request for permission, and the permission for a merger under paragraph two, shall be in accordance with the criteria, procedure, and conditions prescribed in the Commission's notification.

The provisions under paragraph one and paragraph two shall not apply to a merger conducted in order to adjust the internal structure of a business operator related to each other due to a policy or commanding power as prescribed in the Commission's notification.

Section 52: In consideration of granting a permission under Section 51 paragraph two, the Commission shall complete the procedure within 90 days from the request's receipt date. In case by necessity, such consideration is not completed within the period, an extension of not more than 15 days shall be given and the reasons and necessity for an extension of the consideration shall be recorded.

The Commission shall consider granting a permission in recognition of valid business-related necessity, benefit in supporting a business operator, not causing severe damage to the economy, and no impact on the essential benefits consumers are entitled to as a whole.

In a case where a permission order is granted, the Commission may set a time period or any other condition for the business operator which is granted the permission to follow.

The Commission shall indicate reasons for granting or not granting a permission to merge covering both factual and legal aspects of the case. The Commissioners shall sign the order and Article 61 paragraph two shall apply *mutatis mutandis*.

The business operator receiving a notification of such order, if in disagreement with it, may file a lawsuit in an administrative court within 60 days from the date the order is notified.

Section 53: A business operator granted permission to merge shall undertake it in accordance with the time period and conditions set out in the permission, as prescribed by the Commission.

In case there is a violation or conduct not in accordance with paragraph one, the Commission shall have the power to withdraw the permission order in whole or in part and may impose a time period for the business operator to take action accordingly.

Section 54: Any business operators competing with each other in the same market shall not jointly undertake any conduct which monopolizes, reduces, or restricts competition in that market in one of the following ways:

(1) to fix, whether direct or indirectly, purchasing or selling price, or any trading conditions that affect the price of goods or services;

(2) to limit the quantity of goods or services that each business operator will produce, purchase, sell, or provide, as agreed;

(3) to knowingly establish an agreement or conditions in order for one side to win an auction or to win in a bid of goods or services or in order for another side not to enter an auction or a bid of goods or services;

(4) to allocate areas in which each business operator will sell, or reduce a sale or purchase goods or services, or allocate purchasers or sellers to or from which each business operator will sell or purchase goods or services under the condition that other business operators shall not purchase or sell those goods or services.

The provisions under paragraph one shall not apply to the conduct of business operators related to each other due to a policy or commanding power as prescribed in the Commission's notification.

Section 55: Business operators shall not jointly undertake conduct which monopolizes, reduces or restricts competition in a market in one of the following ways:

(1) to establish conditions referred to under Section 54 (1), (2), or (4) among business operators which are not competitors in the same market;

(2) to reduce the quality of goods or services to a condition lower than that previously produced, sold, or provided;

(3) to appoint or assign any one person to exclusively sell the same goods or provide the same services, or of the same type;

(4) to set conditions or practices for purchasing or producing goods or services so that the practice follows what is agreed;

(5) to enter joint agreements in other manners as prescribed in the Commission's notification.

Section 56: The provisions under Section 55 shall not apply to one of the following situations, where:

(1) the conduct of business operators is related to each other due to a policy or commanding power as prescribed in the Commission's notification;

(2) the joint business agreement is for the purpose of developing production, distribution of goods, and promotion of technical or economic progress;

(3) the joint agreement is in the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted rights, with a duty to pay charges, fees, or other remunerations for the rights granted;

(4) the agreement type or business format is prescribed in a ministerial regulation on the Commissions' advice.

A joint agreement under paragraphs (2) and (3) shall not result in any limitation exceeding what is the necessary in order to achieve the benefits mentioned above, shall not cause a monopoly power or substantially restrict competition in a market, and impact on consumers shall be considered.

Section 57: No business operator shall undertake any conduct resulting in damage on other business operators in one of the following ways:

- (1) by unfairly obstructing the business operation of other business operators;
- (2) by unfairly utilizing superior market power or superior bargaining power;
- (3) by unfairly setting trading conditions that restrict or prevent the business operation of others;
- (4) by conduct in other ways prescribed in the Commission's notification.

Section 58: No business operator shall carry out a legal act or enter a contract with a business operator in a foreign country without appropriate justification, where that action will result in a monopoly conduct or unfairly restrict trade, as well as cause serious harm to the economy and consumers' benefits as a whole.

Section 59: In order to facilitate business operations, a business operator may submit a request to the Commission to consider the following matters:

- (1) the conduct of a business operator that has a dominant power in a market under Section 50;
- (2) the business operation having a nature pursuant to Section 54, Section 55, Section 57 or Section 58;

Submission of a request under paragraph one shall be in accordance with criteria and methods prescribed in the Commission's notification.

In consideration of a request under paragraph one, the Commission may impose any condition which the business operator must follow in order to comply with this Act.

The Commission's decision shall be binding only on the requester and in the scope and time period as prescribed by the Commission. If, afterwards, it appears to the Commission that the information received from the requester which is used in the Commission's consideration, is not substantially accurate nor complete, or the requesting business operator does not comply with the conditions prescribed by the Commission under paragraph three, the Commission shall withdraw its decision and notify the business operator.

Section 60: In a case where the Commission has sufficient evidence to believe that a business operator has violated or will violate Section 50, Section 51 paragraph two, Section 54, Section 55, Section 57 or Section 58, the Commission shall have the power to make an order in writing to instruct that business operator to suspend, stop, or correct or change such conduct. This shall be in accordance with criteria, methods, conditions, and the time period prescribed by the Commission.

In issuing an order under paragraph one, the Commission may impose any necessary conditions required in order to achieve the purposes of this Act.

The business operator receiving the notification of such order under paragraph one, who disagrees with such order, shall have a right to file a lawsuit in an administrative court within 60 days from the date of order's receipt.

Section 61: In issuing an order under Section 60, the Commission shall indicate the reasons for such order covering both factual information and legal issues along with the endorsement of the Commissioners who considered such matters.

Notification of the order under paragraph one shall be carried out within 7 days from the date of the Commission's having issued the order. The provisions under Section 66 shall apply *mutatis mutandis*.

Section 62: Any person receiving an order under Section 60 shall act according to such order, unless the administrative court issues a judgment or an order of stay of execution or order to withdraw the Commission's order.

CHAPTER 4 OFFICERS

Section 63: In performing their duties under this Act, officers shall have the following powers:

(1) to issue a subpoena for any person to give an oral presentation and provide factual information or provide an explanation in writing or to send accounts, registrations, documents or any evidence for examination or consideration;

(2) to enter places and venues of operation, production, sale, purchase, storage of goods, service provision of a business operator or any person, or other places where it is reasonably believed that there is a violation of provisions under this Act in order to conduct an examination under this Act to search and seize, or gather documents, accounts, registrations, or other evidence for the benefit of examination and proceeding with a case under this Act;

In this case, officers shall have the power to inquire into factual information or call for accounts, registrations, documents or other evidence from business operators or relevant persons, as well as instruct any person on the premises to act as necessary.

(3) to collect or bring a good in the required quantity as a sample for examination or analysis without paying for the good. This shall be carried out in accordance with the criteria prescribed in the Commission's notification.

In case of (2), if it is a search pursuant to the Criminal Procedure Code, there shall be a search warrant unless there is another cause to believe that the process of getting a search warrant may be too slow and documents or such evidence may be removed, hid, destroyed or transformed, in which case the officers shall proceed to search, seize, or gather documents or evidence related to an offence without a prior search warrant. However, the Criminal Procedure Code shall be followed. Beginning a search at night shall be prohibited unless it is an operational time relevant to the place being searched.

Section 64: In performing the duties of officers, relevant persons shall facilitate those officers as appropriate.

Section 65: In performing their duties, an officer shall present his or her identification card to relevant persons.

The identification card shall conform to the format prescribed in the Commission's notification.

Section 66: In sending a letter pursuant to Section 63(1), the provisions regarding notifications under the Administrative Procedural Law shall apply *mutatis mutandis*.

Section 67: In performing duties under this Act, officers shall be officers under the Criminal Code.

Section 68: In performing duties under this Act, officers shall have the same powers as those of administrative officers or police officers under the Criminal Procedure Code.

CHAPTER 5

FILING OF LAWSUITS FOR DAMAGE

Section 69: A person receiving damages due to a violation of Section 50, Section 51 paragraph two, Section 54, Section 55, Section 57, or Section 58, shall have a right to file a lawsuit for damage from a violator of the law.

In filing a lawsuit for damage under paragraph one, the Consumer Protection Commission, or associations or foundations that the Consumer Protection Commission recognizes under the law on consumer protection, shall have a right to file a lawsuit for damage on behalf of consumers or members of the associations or foundations, as the case may be.

Section 70: In filing a lawsuit for damage under Section 69, if the lawsuit has not been filed within the time period of one year from the date the person suffering damage

knows or should have known the cause of such damage, the right to bring the case to the court shall lapse.

CHAPTER 6
PUNISHMENTS
PART 1
CRIMINAL PUNISHMENTS

Section 71: Any person violating Section 16 or Section 43 shall be subject to a term of imprisonment of not more than one year or a fine of not more than 100,000 Baht or both.

Section 72: Any person violating Section 50 or Section 54 shall be subject to a term of imprisonment of not more than two years or a fine of not more than ten percent of the turnover in the year of the offence, or both.

In a case where it is an offence committed in the first year of the business operation, the person shall be subject to a term of imprisonment of not more than two years and a fine of not more than 1 million Baht, or both.

Section 73: Any person not complying with a summons document from officers under Section 63(10) shall be subject to a term of imprisonment of not more than three months or a fine of not more than 5,000 Baht, or both.

Section 74: Any person obstructing officers in the performance of their duties under Section 63(2) or (3) shall be subject to a term of imprisonment of not more than one year or a fine of not more than 20,000 Baht, or both.

Section 75: Any person not facilitating officers under Section 64 shall be subject to a term of imprisonment of not more than one month or a fine of not more than 2,000 Baht, or both.

Section 76: Any person revealing factual information regarding the business or operation of a business operator that is factual information normally reserved and not revealed by a business operator and was received or known due to performance of duties under this Act, shall be subject to an imprisonment of not more than one year or a fine of not more than 100,000 Baht, or both. There is an exception to this case when the disclosure is in accordance with the performance of government duty or for the benefit of investigations, inquiries, case proceedings, or the operation of the Office.

Any person receiving or knowing any factual information from the person under paragraph one and revealing that information in a manner that will likely damage any person, shall be subject to the same penalties.

Section 77: In the case where an offender is a legal person and if such offence of that legal person is committed under instruction or through the conduct of a director,

manager, or any person responsible for the operation of such legal person, or in a case where that person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing that legal person to commit an offence, such person shall also be subject to a punishment as prescribed for that particular offence.

Section 78: Any person suffering damage has the right to file a complaint of an offence under Section 72 to the Commission for its consideration of the matter under this Act, however, no right is provided to the person suffering damage to file a criminal lawsuit directly by himself or herself.

Section 79: For all offences under this Act, the Commission shall have the power to settle cases. In executing such power, the Commission may assign the Secretary-General to act on the Commission's behalf.

When the alleged person pays the fine for the amount of settlement within the required period, it shall be deemed that the case is terminated under the provisions of the Criminal Procedure Code.

The amount of fine to settle cases shall be determined according to criteria, methods, and conditions prescribed in the Commission's notification.

PART 2

ADMINISTRATIVE PUNISHMENTS

Section 80: Any person violating Section 51 paragraph one, shall be subject to an administrative fine of not more than 200,000 Baht and a further fine of not more than 10,000 Baht per day for the duration or the period the violation occurred.

Section 81: Any person violating Section 51 paragraph two or not complying with Section 53 shall be subject to an administrative fine of not more than 0.5 percent of transaction value of the merger.

Section 82: Any person violating Section 55, Section 57, or Section 58, shall be subject to an administrative fine of not more than 10 percent of the turnover in the year of offence.

In a case where it is an offence committed in the first year of the business operation, the person committing the offence shall be subject to an administrative fine of not more than 1 million Baht.

Section 83: Any person violating Section 60 shall be subject to an administrative fine of not more than 6 million Baht and a further fine of not more than 300,000 Baht per day when the violation continues.

Section 84: In cases where an offender subject to an administrative fine is a legal person, if such offence of that legal person is committed under instruction or through the conduct of a director, manager, or any person responsible for the operation of such legal

person, or in a case where that person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing that legal person to commit an offence, such person shall also be subject to a punishment as prescribed for that particular offence.

Section 85: In considering the issuance of an order to impose an administrative fine the Commission shall consider the seriousness of the offense first.

In a case where the person subject to an administrative fine does not pay that fine, the provisions related to an administrative order's execution under the Law on Administrative Procedure shall apply *mutatis mutandis*. In a case where there is no officer to execute such an order, or there is a person but he or she is unable to proceed with the execution of the order, the Commission shall have the power to file a lawsuit in an administrative court in order to enforce the payment of the fine. In this case, if the administrative court views that such an order for the payment of the fine is lawful, the administrative court shall have the power to consider and make a judgment and enforce seizure or take hold of properties to sell by auction to pay for the fine imposed.

TRANSITIONAL CHAPTER

Section 86: The Trade Competition Commission under the Trade Competition Act B.E. 2542 which holds its position on the day before the date this Act is effective, shall perform its duties under this Act until the appointment of the Trade Competition Commission under this Act. The process of application and selection of the Trade Competition Commission under this Act shall be completed within 270 days from the date this Act is effective.

Section 87: The Director-General of the Department of Internal Trade shall perform the duties of the Secretary-General until the appointment of the Secretary-General under this Act. The process of appointing the Secretary-General shall be completed within 180 days from the date of the first appointment of the Trade Competition Commission.

Section 88: For the work of the Office to proceed efficiently, the Minister may approve for government officers in the Ministry of Commerce to assist with the work of the Office temporarily for not more than two terms, and each term for not more than two years. All government officers shall receive salaries from their original office.

Section 89: Subject to Section 90, government officers performing their duties in the Office of the Trade Competition Commission under the Trade Competition Act B.E. 2542 holding their positions on the date after the period determined under Section 90, shall be government officers of the Department of Internal Trade, Ministry of Commerce, and shall perform duties in the Office. Such performance of duties shall be considered the performance of civil service duties for the Department of Internal Trade, Ministry of Commerce.

Government officers performing duties in the Office under paragraph one shall receive a salary or wage, as well as others rights and benefits previously received, until he or she is assigned and appointed for a position in the Office. Such government officer shall not be appointed and receive a salary or wage lower than the amount previously received.

Section 90: Government officers under Section 89 who are willing to transfer to become an official of the Office shall exercise the right by informing of their intention in writing to their supervisor within 60 days from the date this Act take effects. Those who do not inform of their intention within such period shall return to perform their duties in the Department of Internal Trade, Ministry of Commerce.

Assignments and appointments of government officers who are willing to transfer to become an official in any position in the Office under paragraph one, shall be in accordance with the capacity, qualification, and salary or wage rates, prescribed by the Commission.

The budget for salaries and wages of government officers of the Department of Internal Trade, Ministry of Commerce, who are assigned and appointed as officials of the Office under paragraph two, shall be transferred to the Office from the date of assignment and appointment.

Government officers who are willing to transfer to become an official under paragraph one shall be deemed resigned from the civil service due to termination or dissolution of such position under the law on government pensions or the law on the government pension fund, as the case may be.

Section 91: Operations, properties, rights, duties, debts, and the budget of the Department of Internal Trade, Ministry of Commerce that are related to the work of the Office of Trade Competition Commission, Department of Internal Trade, Ministry of Commerce, shall be transferred to the Office.

Section 92: All the ministerial regulations, notifications, criteria, or regulations issued under the Trade Competition Act B.E. 2542 that are effective on the date before this Act takes effect, shall still remain effective as long as they do not conflict or contradict this Act and until ministerial regulations, notifications, or regulations issued under this Act are effective.

The process of issuing ministerial regulations, notifications, or regulations under paragraph one shall be completed within 365 days from the date this Act becomes effective. If this process is not completed within the specified time, the Minister shall report reasons of non-completion to the Cabinet.

Countersigning the Royal Command
General Prayut Chan-o-cha
Prime Minister

Rates of Fees

- | | | |
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| (1) Request for a permission to conduct a merger under Section 51 paragraph two | 250,000 Baht | per a request |
| (2) Request for a consideration under Section 59 | 50,000 Baht | per a request |
| (3) Fee for copying or certifying a copy of orders under Section 52, considerations under Section 59, or orders under Section 60 | 100 Baht | per page |

Unofficial Translation

Notes:- The reasons to pass this Act are: the Trade Competition Act B.E. 2542, is due to its having been in force for a long time resulting in some provisions being inconsistent with the pattern and conduct of business which has changed over time. In addition, regulation regarding competition at present is under the power of the Office of Trade Competition Commission, an office established inside the Department of Internal Trade, Ministry of Commerce, making the work process inflexible and lacking independence, rendering the regulations on business operation to have free and fair competition are not as efficient as it should be. Therefore, it is appropriate to improve measures in regulating competition to become more efficient under an authority that is flexible and independent, consistent with development of patterns and behaviors in business operations which have been changing over time. It is thus necessary to pass this Act.

Unofficial Translation